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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

- - - - -
UNITED STATES OF AMERICA)
v.) CRIMINAL ACTION NO.
DAVID ALCORN and) 2:19cr47
AGHEE WILLIAM SMITH II,)
Defendants.)
- - - - -

**** Jury Trial - Day 2 ****

TRANSCRIPT OF PROCEEDINGS
Norfolk, Virginia
February 2, 2022

BEFORE: THE HONORABLE RAYMOND A. JACKSON
United States District Judge, and a jury

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Andrew C. Bosse
Melissa E. O'Boyle
Elizabeth M. Yusi
Assistant United States Attorneys
Counsel for the United States

RICHARD S. YAROW LLC
By: Richard S. Yarow
Counsel for Defendant David Alcorn

FEDERAL PUBLIC DEFENDER'S OFFICE
By: Andrew W. Grindrod
Lindsay Jo McCaslin
Assistant Federal Public Defenders
Counsel for Defendant Aghee William Smith II

1 (Proceedings resumed at 10:04 a.m.)

2 (The venire, Jury Panel C, is present in the
3 courtroom.)

4 THE CLERK: United States of America vs. David
5 Alcorn and Aghee William Smith II, in Criminal Action
6 2:19cr47.

7 Ms. Yusi, is the government ready to proceed?

8 MS. YUSI: We are. Good morning, Your Honor.

9 THE COURT: Good morning.

10 THE CLERK: Mr. Yarow, is Mr. Alcorn ready to
11 proceed?

12 MR. YAROW: We are ready, Your Honor. Good morning.

13 THE COURT: Good morning.

14 THE CLERK: Ms. McCaslin, is Mr. Smith ready to
15 proceed?

16 MS. McCASLIN: We are. Good morning, Your Honor.

17 THE COURT: Good morning.

18 THE CLERK: Members of Jury Panel C, will you please
19 stand and answer "present." Please remain standing until the
20 next number is called and then be seated.

21 Juror Number 1.

22 PROSPECTIVE JUROR: Present.

23 THE CLERK: Juror Number 4.

24 PROSPECTIVE JUROR: Present.

25 THE CLERK: Juror Number 13.

1 PROSPECTIVE JUROR: Present.
2 THE CLERK: Juror Number 16.
3 PROSPECTIVE JUROR: Present.
4 THE CLERK: Juror Number 31.
5 PROSPECTIVE JUROR: Present.
6 THE CLERK: Juror Number 37.
7 PROSPECTIVE JUROR: Present.
8 THE CLERK: Juror Number 46.
9 PROSPECTIVE JUROR: Present.
10 THE CLERK: Juror Number 49.
11 PROSPECTIVE JUROR: Present.
12 THE CLERK: Juror Number 52.
13 PROSPECTIVE JUROR: Present.
14 THE CLERK: Juror Number 57.
15 PROSPECTIVE JUROR: Present.
16 THE CLERK: Juror Number 59.
17 PROSPECTIVE JUROR: Present.
18 THE CLERK: Juror Number 64.
19 PROSPECTIVE JUROR: Present.
20 THE CLERK: Juror Number 76.
21 PROSPECTIVE JUROR: Present.
22 THE CLERK: Juror Number 85.
23 PROSPECTIVE JUROR: Present.
24 THE CLERK: Juror Number 87.
25 PROSPECTIVE JUROR: Present.

1 THE CLERK: Juror Number 99.

2 PROSPECTIVE JUROR: Present.

3 THE CLERK: Juror Number 101.

4 PROSPECTIVE JUROR: Present.

5 THE CLERK: Juror Number 108.

6 PROSPECTIVE JUROR: Present.

7 THE CLERK: Juror Number 121.

8 PROSPECTIVE JUROR: Present.

9 THE CLERK: Juror Number 130.

10 PROSPECTIVE JUROR: Present.

11 THE CLERK: Juror Number 139.

12 PROSPECTIVE JUROR: Present.

13 THE CLERK: Juror Number 140.

14 PROSPECTIVE JUROR: Present.

15 THE CLERK: Juror Number 142.

16 PROSPECTIVE JUROR: Present.

17 THE COURT: Juror Number 153.

18 PROSPECTIVE JUROR: Present.

19 THE CLERK: There are 24 jurors present, Your Honor.

20 Are there any juror present whose number I have not

21 called?

22 Members of the jury, will you please stand and raise
23 your right hand to be sworn.

24 You shall true and perfect answer make to such
25 questions that may be propounded to you by the Court or

1 counsel, so help you God?

2 THE VENIRE: (Answered in the affirmative.)

3 (The venire, Jury Panel C, was duly sworn.)

4 THE CLERK: Thank you. You may be seated.

5 THE COURT: Good morning, ladies and gentlemen.

6 As I tell all juries, I have a microphone here, and
7 you can hear me all the way to the back door. I cannot hear
8 you, so you will have to speak loudly in responding to the
9 Court. This morning, as we go through this process, I will
10 always want you to stand, state your juror number before you
11 respond.

12 You do not have to respond to every question "yes"
13 or "no." If no one stands, then I know you do not have a
14 response. Your response is not a negative to that question,
15 or a positive depending on what the question is.

16 This morning, we are here for trial, a criminal
17 trial, which is expected to last approximately four weeks, as
18 you were informed when you received the jury questionnaire.

19 In this case, there are two defendants, Mr. David
20 Alcorn -- Mr. Alcorn, will you please stand up.

21 Mr. Alcorn is represented by Attorney Richard Yarow.
22 Mr. Alcorn is charged with conspiracy to commit mail and wire
23 fraud, wire fraud, and engaging in unlawful monetary
24 transactions.

25 You may have a seat.

1 Also, the second defendant is Mr. Aghee Smith.
2 Mr. Smith is represented by Attorneys Andrew Grindrod and
3 Lindsay McCaslin of the Federal Public Defender's Office.
4 Mr. Smith is charged with conspiracy to commit mail and wire
5 fraud and several counts of wire fraud.

6 You may have a seat.

7 Representing the United States and prosecuting this
8 case are three Assistant United States Attorneys, Mr. Andrew
9 Bosse, Ms. Elizabeth Yusi, and Attorney Melissa O'Boyle.

10 Also with them are their paralegals and two special
11 agents of the FBI, and I'll leave it to them to introduce
12 them.

13 MS. YUSI: With the FBI, we have FBI Special Agent
14 Julie Shields, FBI Special Agent Jennifer Collins. We also
15 have U.S. postal inspector Jason Thomasson, and IRS Special
16 Agent Andy Bowers.

17 THE COURT: And I return to Defendant Smith.
18 There's also an investigator working with counsel.

19 MS. MCCASLIN: Yes, we have Susan Harrison Jones.
20 She's an investigator with the Federal Public Defender's
21 Office.

22 THE COURT: Thank you very much.

23 Ladies and gentlemen, I ask you to pay close
24 attention to the defendants and to counsel because at a
25 future point, I will ask you further questions about the

1 counsel and the defendants in this case.

2 We are ready to start what is referred to as the
3 jury selection process. A jury in a criminal case consists
4 of 12 qualified jurors, and the Court usually selects
5 alternate jurors. And we are selecting six alternate jurors
6 because these are pandemic times.

7 The alternate jurors selected will sit with the
8 jury, will have the same duties and obligations as the other
9 jurors, but an alternate juror who does not replace a juror
10 prior to the jury retiring to deliberate will be discharged
11 and may not participate in deliberations.

12 In summary, the Court is selecting 18 jurors. Some
13 were selected yesterday; some will be selected this morning
14 among you.

15 The parties have a right to have a qualified and
16 impartial jury, a fair jury. A qualified and impartial jury
17 is one which is responsible and capable and which will,
18 without favor, fear, bias, prejudice, sympathy, or passion,
19 objectively hear and decide the issues to be tried and render
20 its verdict solely based upon the facts that come out in this
21 case and the instructions of law as given to you by the
22 Court.

23 Your impartiality, your qualification may not be
24 assumed without some question, some inquiry. In this inquiry
25 we're about to make is a time-honored process that the courts

1 follow. It's called voir dire. Its purpose is to develop
2 the truth about your competency, your frame of mind, and your
3 ability to abide by the oath you took just a few minutes ago.

4 Your answers will permit the Court to determine
5 whether you need to be excused based upon the Court's
6 determination or the motion of one of the parties in the
7 case. Your answers will also assist the parties in
8 determining how to use their peremptory strikes.

9 A peremptory strike or peremptory challenge, if you
10 want to call it that, is an opportunity that the law gives a
11 party to strike a juror without giving a cause or statement
12 or reason for that strike.

13 So it's important that your answers be complete and
14 be truthful. Each of you is under an obligation to disclose,
15 upon a general question, any and all matters which might tend
16 to disqualify you. So while the sweep of the questions might
17 be general, you are to conscientiously and honestly answer
18 the real implication of the question asked as full as
19 possible.

20 Now, false or misleading answers may result in
21 someone being seated on the jury panel who should not be
22 here. This would be a miscarriage of justice, and we intend
23 to avoid that. We will avoid that.

24 So consider each question very carefully and don't
25 wait until you are selected to see whether you are going to

1 be on the panel before you raise something that might get you
2 off the panel. I always tell jurors if you do that, it's not
3 going to work out well for you.

4 So while the questions may be addressed to all of
5 you, process them carefully and individually. The Court will
6 not assume anything.

7 So my first question is simply this: Can each of
8 you read, write, and speak the English language?

9 You don't have to answer one way or the other. You
10 don't have to vocally answer. If no one stands up, then I
11 know that you don't have a problem.

12 You stood up, sir.

13 PROSPECTIVE JUROR: I can read and write.

14 THE COURT: Okay. You don't need to stand up. You
15 don't need to respond. If someone has a problem with that
16 question, then you stand up and state your juror number.

17 So I take it no one has a language barrier.

18 Do any of you have a physical problem with sight and
19 hearing issues? If so, stand up and let the Court know.

20 Okay. We have two.

21 PROSPECTIVE JUROR: I have somewhat of a hearing
22 problem.

23 THE COURT: Okay. Juror number?

24 PROSPECTIVE JUROR: Juror Number 101.

25 THE COURT: Okay. Can you hear me?

1 PROSPECTIVE JUROR: I can hear you right now, yes,
2 sir.

3 THE COURT: Okay. We will have microphones in here.
4 We also have some hearing aids in here also. So we will deal
5 with that issue as we go along.

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Yes? Juror number?

8 PROSPECTIVE JUROR: 121.

9 THE COURT: I think we can hear you clearly. Go on.

10 PROSPECTIVE JUROR: Thank you. I have a blood-clot
11 issue. I'm awaiting --

12 THE COURT: Wait a minute. Take the microphone over
13 there. I was wrong.

14 PROSPECTIVE JUROR: I've been diagnosed with Leiden
15 factor V. I take medication for blood clotting. So I can't
16 sit still for more than two hours at a time.

17 THE COURT: Well, we will be taking breaks about two
18 hours or every hour and a half to two hours. Thank you very
19 much.

20 And I think we have someone standing on the front
21 here. Let's start. Let's see if we can hear you.

22 PROSPECTIVE JUROR: Juror Number 1. I'm on
23 medication for high blood pressure, so I have the second pill
24 that makes me use the bathroom every so often, so I have to
25 go back and forth.

1 THE COURT: Okay. Thank you very much, Juror
2 Number 1.

3 Have any of you had the opportunity to serve on a
4 jury panel -- civil, criminal, grand jury -- in the past? If
5 you have, please stand, tell us where you served, when you
6 served, if you have prior jury service.

7 Juror Number 52.

8 PROSPECTIVE JUROR: Reno, Nevada. Eight years ago.
9 It was a sex offender case.

10 THE COURT: Next juror?

11 PROSPECTIVE JUROR: (Juror Number 85) I think it
12 was 1983 in Norfolk. It was a murder trial.

13 THE COURT: Where was it?

14 PROSPECTIVE JUROR: Norfolk.

15 THE COURT: Okay. Thank you.

16 Next juror?

17 PROSPECTIVE JUROR: (Juror Number 101.) Suffolk,
18 2019, I had criminal court in Suffolk.

19 THE COURT: Juror number?

20 PROSPECTIVE JUROR: 101.

21 THE COURT: Always start with your juror number.

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Next, behind you.

24 PROSPECTIVE JUROR: Juror Number 140. It was in
25 Virginia Beach. It was a criminal case. It's been about ten

1 years.

2 THE COURT: What type of case?

3 PROSPECTIVE JUROR: It was a -- at the state of
4 Virginia down in Virginia Beach at the courthouse. It was a
5 case where the gentleman had actually shot his wife, and he
6 was still missing, and they found him in Florida.

7 THE COURT: Okay. Thank you.

8 Next?

9 PROSPECTIVE JUROR: Juror Number 130. It was about
10 30 years ago in Portsmouth, Virginia. It was a rape case.

11 THE COURT: Thank you.

12 And finally Juror Number 1.

13 PROSPECTIVE JUROR: It was five or six years ago. I
14 served twice. One was for an accident, a car accident. The
15 other one was for drug charges here in Norfolk.

16 THE COURT: Thank you very much.

17 Ladies and gentlemen, we told you that this case
18 involves conspiracy to commit mail and wire fraud, and I
19 think one count of money laundering. These offenses
20 allegedly occurred between January 2011 through August 2014
21 on one of the conspiracy counts; on another count, it was
22 2011 through 2017 here in the Eastern District of Virginia,
23 in other parts of the country, and around the country.

24 So the Court simply tells you that because the Court
25 wants to know have any of you heard anything or read anything

1 about this case?

2 Okay. No affirmative response.

3 Are any of you related by blood or marriage to any
4 of the parties, the defendants, or the counsel in this case?

5 Have any of you had any professional or personal
6 contact with counsel for the United States? They stood a few
7 minutes ago.

8 Have any of you had any personal or professional
9 relationships or contacts with counsel for the defendants?

10 Have any of you had any type of personal or
11 professional contact with either of the two defendants?

12 Ladies and gentlemen, a number of witnesses may be
13 called in this case over the next few weeks. I will call the
14 names of a number of these witnesses that may be called. If
15 you are not sure whether you know one of the witnesses, you
16 simply let the Court know, listen, and we will come back and
17 see if we can get the parties to tell you whether that
18 witness is a local person or anything else to help you
19 determine whether it's the same person that you know.

20 Starting with Charlotte Annas, Teresa Austin, Brian
21 Avery, Teresa Avery, Margaret Babich, Thomas L. Barnett,
22 Debra Barry, J. Michael Barry, Peggy Barry, Alan Baskin,
23 Coleman Bazelon, Sharyon Bean. That's S-h-a-r-y-o-n Bean.

24 Wilfried Berndt, B-e-r-n-d-t, Bonnie Berndt, Bob
25 Berndt, Ryan Braley, Denise Brown, Jeffrey Browne,

1 B-r-o-w-n-e, Teresa Busch, Richard Busch, Gary Clapper,
2 Darryl Clark, Ruth Clark, Roger Courson, C-o-u-r-s-o-n, Susan
3 Courson, George Cushman, Nathaniel Dodson, Tuesday Douglas,
4 L. Doug Dunn, Rosie Eads.

5 Jeff Eschrich, E-s-c-h-r-i-c-h, Constance Flammang,
6 F-l-a-m-m-a-n-g, Matthew Fowles, Jere Friedman, Raelene
7 Gastman, Nicholas Gentile, Kyle Gerek, Raeann Gibson, Carol
8 Groff, Sunshine Grissom, Andrew Gulcher, G-u-l-c-h-e-r,
9 Vanaleen Hatfield, Laura Houston, Vera Hullum, H-u-l-l-u-m.

10 Patricia Hundley, Kimberly Husted, David Idigpio,
11 Deborah Jenkins, Jacob Kurtz, Helen Larson, Edward Lichtig,
12 Michael Lindauer, Justin Lira, Lawrence Lyon, Alain Martell,
13 Ray Martin, Dennis McCrumb, Peter Melley, M-e-l-l-e-y, Craig
14 Newell, Susan Newell;

15 Jon Palmieri, Amos Parker, Peter Perry, Dee
16 Pinkston, Adan Rangel, Matthew Roth, Barbara Russell, Tony
17 Sellers, Brian Semple, S-e-m-p-l-e, Robert Semple, Brian
18 Smith, Rosie Smith, Grecie Suarez, Ken Sykes, Alan Tilles,
19 Andrea Tottossy, Joe Tottossy;

20 Terri Walsh, Charles West, Michael J. Wilhelm,
21 Phillip Yee, Lucille Zenke, Z-e-n-k-e, Daryl Bank, Tripp
22 Forrest, Steve Gasser, Robert Guest, Bob LaBine, Peter Lewis,
23 Kent Maerki, M-a-e-r-k-i, Terence Pinkston, Wanda Rivera,
24 Lynne Shelton, Aaron Bobkin, Darcy Oliver, Robert Jones,
25 Peter Lewis, and Thomas Littler.

1 If you at some point determine that you do know one
2 of these potential witnesses, please bring it to the
3 attention of the Court, and the Court will respond
4 accordingly.

5 Has any member of the panel ever been a victim of
6 fraud; you or your immediate spouse or immediate family
7 member?

8 All right.

9 PROSPECTIVE JUROR: Juror Number 4. My Social
10 Security number was used by another individual, which ended
11 up a summons being issued and also a credit card taken out.

12 THE COURT: Okay. Thank you.

13 PROSPECTIVE JUROR: Juror Number 13. The company
14 that my husband owns, someone got ahold of one of our checks
15 and reproduced it and cashed made-up checks in Gloucester,
16 Williamsburg, Yorktown. We went to court for it.

17 THE COURT: How much was involved in this?

18 PROSPECTIVE JUROR: About 8,000.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR: Juror Number 108. I had someone
21 to get my card information and was withdrawing money out of
22 my account in California.

23 THE COURT: Okay. Thank you.

24 Three of you indicated that you have been victims of
25 fraud. Do you believe there's anything about that experience

1 that would keep you from rendering a fair and impartial
2 verdict in this case?

3 A few minutes ago a number of you indicated you've
4 had some prior jury service. Was there anything about that
5 jury experience that you believe that would cause you not to
6 be able to render a fair and impartial verdict in this case?

7 Have any of you been employed in a law enforcement
8 capacity?

9 PROSPECTIVE JUROR: Juror Number 130. I have -- I
10 actually just retired from the police department as a
11 civilian the end of the year.

12 THE COURT: What police department?

13 PROSPECTIVE JUROR: Chesapeake Police Department.

14 THE COURT: What was your position there?

15 PROSPECTIVE JUROR: Stenographic reporter. And --
16 well, I guess this doesn't matter. I've worked for the
17 probation office as well in the Commonwealth Attorney's
18 Office.

19 THE COURT: Okay. Thank you.

20 PROSPECTIVE JUROR: Uh-huh.

21 PROSPECTIVE JUROR: Juror Number 139. I'm
22 commissioned as a special police officer for the City of
23 Norfolk. I issue summonses to take people to court.

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR: Juror Number 46. I was a police

1 officer in the City of Little Rock, Arkansas, about 25, 30
2 years ago, in my early 20s. In 2002, I began working for the
3 City of Chesapeake as a 911 dispatcher, and they were up
4 under the police department there. I stayed there for 17
5 years, and now I work for the City of Portsmouth as a
6 dispatch emergency communications administrator, and I've
7 been there for two years.

8 THE COURT: Thank you.

9 Juror Number 4.

10 PROSPECTIVE JUROR: Juror Number 4. I've been
11 retired a year. I did 31 years as a civilian at the Virginia
12 Beach Police Department. I was administrative assistant. I
13 was a clerk in the Detective Bureau. And I don't know if it
14 matters, but my husband is a police officer with the Virginia
15 Beach Police Department.

16 THE COURT: Thank you.

17 And perhaps I should have made it clear. Do any of
18 you have a spouse or immediate relative who is a police
19 officer?

20 Yes, ma'am? Juror Number 76?

21 PROSPECTIVE JUROR: Yes, sir. My son is a Virginia
22 Beach sheriff's officer.

23 THE COURT: Okay. Thank you.

24 PROSPECTIVE JUROR: You're welcome.

25 PROSPECTIVE JUROR: (Juror Number 46) I also have

1 relatives that are police officers, but they reside in the
2 state of Arkansas and Texas.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR: 31. My nephew is a Norfolk
5 police officer.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: Juror Number 64. My
8 father-in-law retired from the Navy as a military police.

9 THE COURT: Thank you.

10 At least seven of you have indicated that you have
11 either been in law enforcement or have a relative that has
12 been in law enforcement, and my question is:

13 Is there anything about your association with the
14 relatives or your experience as police officers or law
15 enforcement officers that would cause you to be unable to sit
16 in this case and render a fair and impartial verdict based
17 upon the facts and the law as given to you by the Court?

18 Would any of you give more or less weight to the
19 testimony of a law enforcement officer than to the testimony
20 of any other witness solely because of his or her employment
21 in a law enforcement capacity?

22 Bottom line, would you tend to believe a police
23 officer less or more because he or she is a police officer?

24 PROSPECTIVE JUROR: Probably. I mean just because
25 of my experience, I do think I would probably be more

1 weighted -- I'm sorry. Juror Number 4. And I probably would
2 give a little more credence to the police as opposed to not.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR: Juror Number 130. I answered
5 "yes" on my questionnaire, but I think it also depends on the
6 situation, so I would say most likely, but it would just
7 depend on the testimony.

8 THE COURT: Thank you very much.

9 PROSPECTIVE JUROR: Juror Number 142. I think my
10 tendency would be to trust police officers a little bit more
11 just because of their position. I would try not to. I would
12 try to weigh everyone equally, but it might also be my
13 tendency in that direction.

14 THE COURT: We had one up front.

15 PROSPECTIVE JUROR: Juror Number 49. I also, on the
16 questionnaire last month, answered that I would be more
17 inclined to give a bit more credence to the testimony of a
18 police officer. In thinking about it, since you asked the
19 question again today, I honestly likely would be more
20 inclined to trust the police than...

21 THE COURT: Ladies and gentlemen, this is a criminal
22 case. A criminal case is different from a civil case. Under
23 our Constitution, there are certain rights that an individual
24 enjoys who is charged with a crime.

25 Number one, an individual charged with a crime is

1 presumed to be innocent until proven guilty beyond a
2 reasonable doubt. Is there anyone who disagrees with this
3 basic principle of law?

4 Secondly, the United States is required to prove a
5 defendant's guilt beyond a reasonable doubt. Is there anyone
6 who disagrees with this requirement?

7 Thirdly, a defendant is not required to prove his
8 innocence. A defendant is not required to present any
9 evidence, to even cross-examine a witness. The defendant has
10 a constitutional right to remain silent.

11 Is there anyone who disagrees with these basic
12 principles?

13 Is there anyone among you who has formulated an
14 opinion about the guilt or innocence of these two defendants
15 because they have been charged?

16 Do any of you have any personal, professional, or
17 prior relationship with each other? In other words, you
18 attend the same church, same baseball league, whatever, work
19 in the same place.

20 Do any of you belong to any group which advocates
21 the reform or the repeal of any criminal laws?

22 Do any of you belong to any organizations that
23 support or serve as an advocate group for law enforcement?

24 Number 4?

25 PROSPECTIVE JUROR: Yes. I'm a part of a --

1 THE COURT: Wait a minute.

2 PROSPECTIVE JUROR: Juror Number 4. I'm part of a
3 Facebook group for local police officer wives.

4 THE COURT: Okay. Thank you.

5 Do any of you have any moral, religious, or ethical
6 belief that would make it difficult for you to sit as a juror
7 in this case?

8 Now, if you are selected as a juror in this case,
9 you will be required to put aside any feeling of passion or
10 prejudice and decide this case solely on the evidence
11 introduced during the trial and the instructions of law as
12 given to you by the Court. Do any of you feel you cannot do
13 this?

14 Now, the Court has asked a series of questions
15 designed to determine your frame of mind and your ability to
16 abide by the oath that you took a few minutes ago, but I ask
17 you to search your conscience. Do any of you know of any
18 reason why you think you could not sit in this case and
19 render a just, fair, impartial, honest verdict?

20 What the Court is going to do at this time is the
21 Court wants to have a brief conference with the counsel in
22 the case. Make every effort not to hear. We're going to be
23 on phones up here.

24 (A sidebar conference was held as follows:)

25 THE COURT: Counsel, those are the basic questions

1 I'm going to ask. Is there anything else?

2 MR. YAROW: This is Mr. Yarow for David Alcorn. I
3 think when you were asking the questions, you asked if
4 anybody knows any of the defendants two times. I think one
5 time you meant to ask if you know any of defendants' counsel.
6 I'm not sure that you asked that question. And I do
7 recognize somebody in the jury. They may not recognize me.

8 THE COURT: Okay. I thought my question was have
9 you had any personal or professional contact with counsel for
10 the defendants? Well, perhaps they don't recognize you. I'm
11 going to ask it again and have you take your mask off.

12 MR. YAROW: I will.

13 THE COURT: I will do that.

14 MR. YAROW: Okay.

15 MR. BOSSE: Your Honor, this is Andrew Bosse for the
16 government. I think that's Juror Number 49. I guess I would
17 like to know -- I mean, we could bring him up and ask do you
18 know Mr. Yarow?

19 MS. YUSI: Should we do motions for strikes on some
20 of the answers so far, Your Honor?

21 THE COURT: I'll get to that. First I want to find
22 out how many more questions you all have.

23 MS. McCASLIN: Your Honor, this is Lindsay McCaslin
24 representing Mr. Smith. We do have a couple questions.

25 THE COURT: Could you speak a little louder?

1 MS. McCASLIN: Yes. Your Honor, for Number 49 --
2 I'm sorry, let me go back up to 4. For Number 4, the juror
3 indicated that -- I'm sorry. I'm sorry, Judge. It's for
4 Number 1.

5 Juror Number 1 indicated that, on her questionnaire
6 for Question Number 50, that she was unsure about whether or
7 not she would have difficulty following the rules about the
8 presumption of innocence and whether the defendant needs to
9 testify. So we would like clarification on that.

10 For Number 49 -- no. We're going to skip that one.
11 Sorry.

12 For Number 108, the questionnaire, the juror
13 indicated on Number 48 that they -- they checked "yes," that
14 they may consider the indictment as evidence, so we would
15 like follow-up on that.

16 For Juror Number 121, the juror indicated on
17 questionnaire Number 13 that they would have a hard time
18 avoiding looking up the case during the trial based on
19 curiosity.

20 And I believe that's our questions.

21 THE COURT: Okay. I think what we can do is
22 eliminate some of these questions by the strikes.

23 Let's go back to any strikes that the parties want
24 to make, and that may cure the need to bring up a couple of
25 these people.

1 Let's go back to Juror Number 1. Any questions
2 about Juror Number 1?

3 MS. McCASLIN: I do have a question about the
4 presumption of innocence and whether she would require that
5 the defendant testify. Questionnaire Number 50 is
6 concerning, for constitutional reasons.

7 MR. GRINDROD: Just if you are trying to eliminate
8 the need to bring people up here, I just wanted to make the
9 Court aware, that was also the member who said that they were
10 on a medication that required frequent trips to the bathroom,
11 so I don't know if you're going to excuse that juror.

12 THE COURT: That's the one reason the Court inquired
13 about the strikes, potentially, with Juror Number 1. If she
14 requires frequent trips to the bathroom, the Court only takes
15 a break every hour and a half to two hours.

16 MR. BOSSE: This is Andrew Bosse for the government.
17 If they're going to have her come up and examine her about
18 the presumption of innocence, we could ask her about if there
19 is accommodations the Court could make, if she's coming up
20 anyway.

21 THE COURT: Okay. We'll let that one go.

22 If there are no other strikes --

23 MR. BOSSE: Okay. Never mind. If you're going to
24 do strikes -- I have a couple other questions, but if we're
25 going to do strikes first, it's fine.

1 THE COURT: The Court is asking for strikes so we
2 can avoid bringing somebody up here. If we're going to
3 strike them, we don't need to bring them up here.

4 Does anybody have any others?

5 MR. GRINDROD: Your Honor, we do.

6 MS. McCASLIN: Your Honor, we would move to strike
7 Juror Number 4. The juror did indicate that her spouse is an
8 officer, she is part of a wives group for police officer
9 wives. She has worked at the Virginia Beach Police
10 Department for 31 years and stated pretty clearly that she
11 probably would give more weight to law enforcement.

12 THE COURT: Ms. McCaslin, it's very difficult to
13 hear you. I don't know what the problem is with the
14 microphone over there.

15 MS. McCASLIN: Sorry. Can you hear me better now?

16 (Pause.)

17 THE COURT: Any objection to that strike?

18 MR. BOSSE: No, sir, Your Honor.

19 THE COURT: We will strike Number 4.

20 Any other strikes?

21 MS. McCASLIN: Yes, Your Honor. This is Lindsay
22 McCaslin again. We are moving to strike Number 49. The
23 individual indicated on their questionnaire, Number 52, that
24 they might have a police bias in favor of trusting police.
25 They also indicated that -- they also stood up today and

1 indicated that they would also trust police.

2 On the questionnaire, they also, on Number 69,
3 checked that they would base their verdict on personal views
4 instead of law.

5 MR. BOSSE: Is this the same juror that may know
6 Mr. Yarow? Okay. There's no objection to striking that
7 juror.

8 THE COURT: Number 49 is stricken.

9 Any others?

10 MS. McCASLIN: Yes, Your Honor. Juror Number 130.
11 The juror also indicated that she would be trusting the law
12 enforcement officers over other witnesses.

13 THE COURT: I think she said it depended upon the
14 situation, and I think we'd have to do some further inquiry
15 before the Court would be inclined to strike her.

16 MR. YAROW: She also said in her questionnaire she
17 believe -- I'm sorry, she has a predisposition against those
18 that steal other people's money.

19 MR. BOSSE: This is Andrew Bosse for the government.
20 I don't think there's anything wrong with anyone having a
21 predisposition against people who steal. That doesn't have
22 anything to do with whether they could be a fair judge of the
23 facts in the case as they're presented here in this trial.

24 MS. McCASLIN: This is Lindsay McCaslin. I would
25 disagree because this case does involve fraud. Obviously if

1 the juror is more inclined to just seek restitution and
2 punishment as opposed to holding the government to their
3 burden of proof, that is a constitutional concern for
4 Mr. Smith.

5 THE COURT: Well, I'll tell you what, we will
6 question the juror about that. I think most people in the
7 room have a predisposition against people who steal. So
8 there's nothing unusual about that statement, but we will
9 inquire.

10 Any others?

11 MR. BOSSE: Judge, this is Andrew Bosse. I did have
12 other people I wanted to ask about bringing up for further
13 inquiry, but no other strikes from the government.

14 THE COURT: Who are the others?

15 MR. BOSSE: Your Honor, there's -- Juror Number 99
16 wrote in her questionnaire that she had served as an expert
17 witness for mental competency in criminal cases, and I just
18 want to find out, you know, was it all for the defense, was
19 it all for the prosecution, or for both sides. And she also,
20 I think, had noted some travel concerns.

21 Juror Number 142 is the juror who is raising funds
22 to be a missionary and had also made a statement about
23 needing to have 100 percent proof before making a finding of
24 guilt. So we would ask for 99 and 142.

25 And if I could consult briefly?

1 (Pause.)

2 MR. BOSSE: Juror Number 60 may know our postal
3 inspector Jason Thomasson.

4 THE COURT: Which one?

5 MR. BOSSE: 60, who is a postal carrier who may know
6 Mr. Thomasson. I doubt that that would be a problem, but it
7 would make sense, I think, to inquire.

8 THE COURT: The Court has, bringing back for
9 inquiry, Number 108, Number 121. I can't remember, what did
10 121 say?

11 MS. McCASLIN: Your Honor, this is Lindsay McCaslin.
12 This juror had -- didn't know if they would be able to avoid
13 looking up the case during the jury trial. Also, they have a
14 strong opinion of financial advisors, and we don't know
15 anything about that. That's Question Number 32 on the
16 questionnaire.

17 THE COURT: Okay. Number 99, Number 142, and 16.
18 That's five we're bringing back.

19 What did we say about Juror Number 1?

20 MR. BOSSE: I think the Court was going to bring her
21 back and, also, 130 as well.

22 THE COURT: I don't remember what I said -- oh, yes,
23 Number 130, I remember. Well, we've got about eight here
24 that we're going to be bringing back -- seven. Let's get
25 started. I'll start with the lowest number first.

1 (To the venire:) Juror Number 1, will you please
2 step forward.

3 (Juror Number 1 entered the conference.)

4 THE COURT: You are Juror Number 1?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Ma'am, you indicated you had a medical
7 issue.

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: And that you may have to use the rest
10 facilities; is that correct?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: And how frequently do you encounter this
13 problem?

14 PROSPECTIVE JUROR: Because the medication is every
15 day, so I haven't used it this morning because of the jury
16 summons. I usually go, like, 10 to 15 minutes.

17 THE COURT: Every 10 to 15 minutes?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Okay. Thank you, ma'am. You may step
20 down.

21 PROSPECTIVE JUROR: Thank you.

22 (Juror Number 1 exited the conference.)

23 MR. GRINDROD: Your Honor, this is Andrew Grindrod.
24 We move to strike.

25 THE COURT: The Court will grant that strike.

1 MR. BOSSE: No objection, for the record.

2 THE COURT: (To the venire:) Juror Number 16, step
3 forward.

4 (Juror Number 16 entered the conference.)

5 THE COURT: You are Juror Number 16?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: And what is your occupation?

8 PROSPECTIVE JUROR: I work for the United States
9 Post Office.

10 THE COURT: Do you know Agent Thomasson.

11 PROSPECTIVE JUROR: I do not believe I do.

12 THE COURT: You do not believe you do?

13 PROSPECTIVE JUROR: No, sir, I don't believe I do.

14 THE COURT: Okay. Thank you very much. Step down.

15 (Juror Number 16 exited the conference.)

16 THE COURT: (To the venire:) Juror Number 121.

17 (Juror Number 121 entered the conference.)

18 THE COURT: You are Juror Number 121?

19 PROSPECTIVE JUROR: I am.

20 THE COURT: One of the directives the Court has to
21 the jury is that the jury avoid doing research on this case
22 or anything pertaining to this case if selected as a juror,
23 and on your questionnaire, did you indicate that you would
24 have a hard time avoiding doing that?

25 PROSPECTIVE JUROR: Sir, I don't remember that.

1 THE COURT: But do you understand you cannot do
2 that?

3 PROSPECTIVE JUROR: I do understand that.

4 THE COURT: Are you able to avoid doing independent
5 research or talking to other people about this case while you
6 are a juror?

7 PROSPECTIVE JUROR: If -- yes, I can.

8 THE COURT: I notice you hesitated. Why did you
9 hesitate?

10 PROSPECTIVE JUROR: Because my husband and I are
11 very close and we talk about everything. Before we go to bed
12 at night, we talk about our day. I also have two children
13 that we live in a compound together. We live on -- I live on
14 a farm. We all have our houses together. We eat together
15 three or four times a week. We discuss our days.
16 We share -- I share my grandchildren with them.

17 THE COURT: So you don't think you could avoid
18 talking to them about something that the Court tells you not
19 to talk about?

20 PROSPECTIVE JUROR: I think that I can with -- I
21 know myself. I don't want to tell you that I can and I
22 can't. I mean, I will do my best. But there are times when
23 we -- I just want to be honest with you.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: I mean, you asked me the

1 question, sir.

2 THE COURT: Oh, yeah, we want you to be
3 straightforward and honest. That's why you're under oath.

4 PROSPECTIVE JUROR: That's exactly right.

5 THE COURT: You don't know whether you're going to
6 talk about the case, honestly?

7 PROSPECTIVE JUROR: I would do my best not to.

8 THE COURT: All right. Thank you very much. You
9 may step down.

10 PROSPECTIVE JUROR: Thank you, sir.

11 (Juror Number 121 exited the conference.)

12 MS. McCASLIN: Your Honor, we do have a motion to
13 strike.

14 MR. BOSSE: No objection from the government.

15 THE COURT: Number 121 is stricken.

16 (To the venire:) Juror Number 99.

17 (Juror Number 99 entered the conference.)

18 THE COURT: You are Juror Number 99?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: On your form, you indicated that you
21 testify as an expert?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: In what field?

24 PROSPECTIVE JUROR: Mental health.

25 THE COURT: Mental health?

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: When you testify as an expert, for whom
3 do you testify; plaintiffs, defendants, or who?

4 PROSPECTIVE JUROR: I testified regarding the
5 defendant's competency to stand trial. I really testify for
6 neither the prosecutor nor the defendant, really as an expert
7 for the Court.

8 THE COURT: Okay. Do you have any travel that would
9 prevent you from serving as a juror in this case?

10 PROSPECTIVE JUROR: My sister is getting married out
11 of state in March, so I will be leaving on the -- I believe
12 it's Thursday the 10th. I've actually forgotten. Her
13 wedding is Saturday the 12th.

14 THE COURT: Thank you very much. You may step down.
15 (Juror Number 99 exited the conference.)

16 THE COURT: (To the venire:) Juror 108.
17 (Juror Number 108 entered the conference.)

18 THE COURT: You are Juror Number 108?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: On your questionnaire, I believe you
21 indicated that you might consider the indictment as evidence.
22 Did you say that?

23 PROSPECTIVE JUROR: No.

24 THE COURT: You have to speak.

25 PROSPECTIVE JUROR: No. No. I don't recall saying

1 that. That could have been something I did in error.

2 THE COURT: Do you understand that the mere fact
3 that someone is indicted is not evidence of guilt?

4 PROSPECTIVE JUROR: Correct. I do.

5 THE COURT: Would you in any way consider the fact
6 that these two defendants have been indicted as evidence that
7 they're guilty?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Are you able to listen at the facts and
10 the instructions given by the Court to render a verdict
11 that's fair, just, and impartial?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: And do you promise that you will do that
14 if selected?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Step down.

17 (Juror Number 108 exited the conference.)

18 THE COURT: (To the venire:) Juror Number 142.

19 (Juror Number 142 entered the conference.)

20 THE COURT: You are Juror Number 142?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Put it up closer to your mouth. I'm
23 still having a problem hearing you.

24 Juror Number 142, right?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Now, I think you indicated that you
2 would probably -- you would require 100 percent proof of
3 guilt of the defendants in this case.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Do you understand that the standard is
6 proof beyond a reasonable doubt?

7 PROSPECTIVE JUROR: I guess maybe that's what I was
8 referring to. I would have to be sure, and like you were
9 saying, it would have to be proof beyond doubt; there would
10 need to be no doubt.

11 THE COURT: Are you able to hear her, ma'am?

12 THE STENOGRAPHER: Yes, sir.

13 THE COURT: So it would have to be proof in what
14 sense?

15 PROSPECTIVE JUROR: Without doubt, like you were
16 saying, above -- how did you word that?

17 THE COURT: Proof beyond a reasonable doubt.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. Now, do you engage in
20 fundraising?

21 PROSPECTIVE JUROR: I'm a missionary, and so we
22 raise our -- in a sense, we raise our own salary.

23 THE COURT: Okay. And do you have any conflicts
24 with your fundraising with respect to this trial?

25 PROSPECTIVE JUROR: My husband is going to try to

1 take over this month and see if he can't do the bulk of the
2 work.

3 THE COURT: But otherwise, you are able to serve?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Step down.

6 (Juror Number 142 exited the conference.)

7 THE COURT: (To the venire:) Juror Number 130.

8 (Juror Number 130 entered the conference.)

9 THE COURT: You are Juror Number 130?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: The Court asked you a question whether
12 you would give more or less weight to the testimony of a
13 police officer because he or she is a police officer than you
14 would to another witness, and you answered, I think,
15 "depending on the situation." What do you mean by that?

16 PROSPECTIVE JUROR: Well, I would more than likely
17 give more weight, but it depends on, like, how they come
18 across on the stand. I don't know -- don't know exactly how
19 to say it.

20 THE COURT: Would you tend to believe a police
21 officer more than you would, let's say, another witness in
22 the case who is not a police officer and they're testifying
23 about the same events?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: You would tend to believe the police

1 officer?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Not the police officer, let's say any
4 law enforcement officer.

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: And what is the reason you would tend to
7 believe the law enforcement officer?

8 PROSPECTIVE JUROR: The reason being is, I guess,
9 because of my background, because I've worked in the
10 Detective Bureau, and I've worked in the Commonwealth's
11 Attorney's Office and the probation office. So I guess with
12 my past experience, that's why I would tend to believe that.

13 THE COURT: All right. Thank you very much.

14 PROSPECTIVE JUROR: You're welcome.

15 THE COURT: You may step down.

16 (Juror Number 130 exited the conference.)

17 MS. McCASLIN: Your Honor, this is Lindsay McCaslin.
18 We have a motion to strike.

19 THE COURT: Really?

20 MS. McCASLIN: We do.

21 MR. BOSSE: No objection from the government, Your
22 Honor.

23 THE COURT: 130 is stricken.

24 Those are all the strikes that the Court has and all
25 the jurors the Court will bring up. What we're going to do

1 is we're going to move to the strikes. We need to -- we need
2 to select one more juror because we lost 123 yesterday, and
3 we're going to select six alternates. You get two strikes
4 for those six alternates.

5 So between defense, you're going to have to break it
6 down to two strikes, and the government, two strikes. That
7 wasn't two strikes per defendant. That was just two strikes.
8 So each one of you-all take one strike, if you'd like, and
9 the government will take two strikes, and that should leave
10 us with six alternates. All right.

11 THE CLERK: Your Honor, would you like me to state
12 who's been stricken?

13 THE COURT: Oh, yes, please.

14 THE CLERK: Juror Number 4 -- excuse me. Juror
15 Number 1, Juror Number 4, Juror Number 49, Juror Number 121,
16 Juror Number 130.

17 THE COURT: So that's 4, 1, 49, 121, and 130.

18 THE CLERK: Yes, sir.

19 THE COURT: We struck five. Okay.

20 MS. O'BOYLE: Your Honor, this is Melissa O'Boyle
21 for the government. I just wanted to double check. Are we
22 putting one name on the board first --

23 THE COURT: We're going to deal with trying to get
24 that one name first.

25 MS. O'BOYLE: Okay. Thank you, Your Honor. I was

1 just clarifying that before we got the board.

2 THE COURT: We'll do one name first, and then we'll
3 move to the alternates.

4 MS. O'BOYLE: Thank you.

5 MR. GRINDROD: Just to make sure we're on the same
6 page as far as remaining strikes, is it right that the
7 government, I think, has two left, and each defendant
8 individually has two each, so a total of four over here and
9 two over there?

10 MR. BOSSE: That's our count for the government,
11 yes.

12 THE COURT: That's the count that the Court
13 understands.

14 (The sidebar conference concluded.)

15 THE COURT: Ladies and gentlemen, we have concluded
16 the voir dire examination. Now we will move to the strikes.
17 The counsel will be moving through the strikes by passing a
18 board backwards and forward up here for a period of time, and
19 at the end of that process, we will know who among you will
20 be selected to serve as jurors in this case.

21 (Pause.)

22 THE CLERK: The following jurors have been selected
23 for trial: As your number is called, will you please stand
24 and remain standing.

25 Juror Number 46, Juror Number 59, Juror Number 85,

1 Juror Number 87, Juror Number 99, Juror Number 101, Juror
2 Number 140.

3 THE COURT: Okay. Ladies and gentlemen, those of
4 you who were selected, you may have a seat.

5 Ladies and gentlemen, we want to thank you for
6 coming in to participate in this time-honored process. Those
7 who have been selected, you will have to return here at
8 2:00 p.m. Be here promptly at 2:00 p.m. The Court
9 recommends that you come in before 2:00 so that you can get
10 your mask on and do whatever else you need to do.

11 Those who have not been selected, we thank you for
12 coming. I did not tell you this earlier, but this is a
13 public courtroom that you've paid for. You are free, as you
14 are free in any American courtroom, to come in and sit down
15 and listen at what happens.

16 You don't have to be part of the process or the
17 ceremony or what's going on. So feel free to return any
18 time, not just for this case, any time you want to come in
19 and see what's going on in the federal court.

20 At this time, you may be excused. You should depart
21 quietly. Leave your masks and your paddles on the bench.
22 Put your other mask back on, the N95, KN95, whichever you
23 were given. Put those on before you begin to depart.

24 (The venire, Jury Panel C, exited the courtroom.)

25 MR. GRINDROD: Your Honor, would the Court

1 remind the jury not to --

2 THE COURT: Yes.

3 Now, ladies and gentlemen, for those of you who have
4 been selected, do not discuss this case with anyone, do not
5 do any research, do not do anything. Keep an open mind.
6 Come back here to get further instructions from the Court.
7 Do not let anyone approach you to talk to you about this
8 case.

9 (The jury exited the courtroom.)

10 THE COURT: Counsel, we will return here at
11 2:00 p.m. for the preliminary instructions to the jury, and
12 after that, we will move to opening arguments this afternoon.

13 (Recess from 11:50 a.m. to 2:15 p.m.)

14 THE COURT: Bring the jury in, please.

15 (The jury entered the courtroom.)

16 THE COURT: Good afternoon, ladies and gentlemen.
17 The next time you all come in, you can move with dispatch to
18 the very seat that you're sitting in. Just go right back to
19 the same seat you're sitting in, and it should be done very
20 quickly.

21 Now that you have been sworn and selected as a jury,
22 I will briefly tell you something about your duties as jurors
23 and give you some preliminary instructions to guide you as
24 you listen to the evidence in this case. But right now,
25 we're going to have the roll call to make sure you are all

1 here.

2 THE CLERK: Members of the jury, will you please
3 answer "present" as your number is called.

4 Juror Number 7.

5 THE JUROR: Present.

6 THE CLERK: Juror Number 23.

7 THE JUROR: Present.

8 THE CLERK: Juror Number 26.

9 THE JUROR: Present.

10 THE CLERK: Juror Number 38.

11 THE JUROR: Present.

12 THE CLERK: Juror Number 43.

13 THE JUROR: Present.

14 THE CLERK: Juror Number 46.

15 THE JUROR: Present.

16 THE CLERK: Juror Number 59.

17 THE JUROR: Present.

18 THE CLERK: Juror Number 84.

19 THE JUROR: Present.

20 THE CLERK: Juror Number 85.

21 THE JUROR: Present.

22 THE CLERK: Juror Number 87.

23 THE JUROR: Present.

24 THE CLERK: Juror Number 90.

25 THE JUROR: Present.

1 THE CLERK: Juror Number 99.

2 THE JUROR: Present.

3 THE CLERK: Juror Number 101.

4 THE JUROR: Present.

5 THE CLERK: Juror Number 112.

6 THE JUROR: Present.

7 THE CLERK: Juror Number 117.

8 THE JUROR: Present.

9 THE CLERK: Juror Number 118.

10 THE JUROR: Present.

11 THE CLERK: Juror Number 136.

12 THE JUROR: Present.

13 THE CLERK: Juror Number 140.

14 THE JUROR: Present.

15 Members of the jury, would you please stand and
16 raise your right hand to be sworn. And will the defendants
17 please stand and face the jury.

18 You shall well and truly try and true deliverance
19 make between the United States of America and David Alcorn
20 and Aghee William Smith II, defendants at the Bar whom you
21 shall have in charge, and a true verdict give according to
22 the evidence, so help you God.

23 (The jury answered in the affirmative.)

24 THE CLERK: Thank you. You all may be seated.

25 THE COURT: Once again, now that you have been

1 sworn, the Court will give you some information to guide you
2 as you listen at the testimony and certainly assist you when
3 it comes time for your deliberations. For those of you who
4 have served before, the instructions from the Court may seem
5 repetitive, but nevertheless, these are important
6 instructions. At the end of the trial, the Court will give
7 you more detailed instructions, and those instructions will
8 control your deliberations.

9 Remember, there are six alternate jurors among you.
10 The alternate jurors selected will sit with the jury, will
11 have the same duties, as I told you before, and obligations
12 as the other jurors, but an alternate juror who does not
13 replace a juror prior to the jury retiring to deliberate will
14 be discharged and may not participate in deliberations.

15 It will be your duty to decide from the evidence
16 what the facts are. You and you alone are the judges of the
17 facts. You will hear the evidence, decide what the facts
18 are, and then apply those facts to the law which the Court
19 gives you. This is how you will arrive at your verdict.

20 In doing so, you must follow the law whether you
21 agree with it or not. You must not take anything that I may
22 say as judge during the course of this trial, or anything I
23 may do, as indicating what your verdict should be. Don't be
24 influenced by my note-taking at times. What I write down may
25 have nothing to do with what you're required to do in this

1 trial as a juror.

2 It's sometimes the duty of the Court to admonish an
3 attorney who, out of zeal for his or her cause, does
4 something which is not in keeping with the Rules of Evidence
5 or procedure. Do not permit this, if it should happen, to
6 have any effect on your evaluation and merits of the case.

7 You will decide what the facts are from the evidence
8 which will be produced and be presented in this courtroom.
9 That evidence will consist of the testimony of witnesses,
10 depositions -- that is, testimony taken under oath out of the
11 court -- documents, and other things received in evidence as
12 exhibits, and any facts on which the attorneys stipulate --
13 that means they agree on these facts -- and things or facts
14 which I instruct you to accept.

15 The following things, ladies and gentlemen, are not
16 evidence, and you must not consider them as evidence in
17 deciding this case -- in deciding the facts of this case:

18 Number one, statements and arguments of the
19 attorneys, questions and objections of the attorneys,
20 testimony the Court instructs you to disregard, anything you
21 may see or hear outside of this courtroom when it's not in
22 session, even if you see or hear it done or see it by one of
23 the parties or by one of the witnesses.

24 There are two kinds of evidence that you must
25 consider or may consider, direct and circumstantial evidence.

1 Direct evidence is just what it appears to be,
2 testimony by a witness about what that witness personally saw
3 or heard or did. Circumstantial evidence is indirect
4 evidence. That is, it is proof of one or more facts for
5 which you or one can find or infer another fact.

6 My common example I use all the time in trials is,
7 the fact that you walk outside and it's wet everywhere, you
8 are in here with no windows, but you can conclude
9 circumstantially that it rained while you were in here.

10 You may consider both direct and circumstantial
11 evidence in deciding this case. The law permits you to give
12 equal weight to both, but it is for you to decide how much
13 weight to give to any evidence.

14 You as jurors must decide this case based solely on
15 the evidence presented here within the four walls of this
16 courtroom. This means that during this trial, you must not
17 conduct any independent research about this case, the matters
18 in the case, and the individuals or the corporations involved
19 in this case.

20 In other words, you should not consult dictionaries,
21 reference materials, search the internet, websites, blogs, or
22 use any other electronic tools to obtain information about
23 this case or to help you decide the case. Please do not try
24 to find out information from any source outside the confines
25 of this courtroom.

1 Until you retire to deliberate, you may not discuss
2 this case with anyone, even your fellow jurors. After you
3 retire to deliberate, you may begin discussing the case with
4 your fellow jurors. But you cannot discuss this case with
5 anyone else until you have returned a verdict in the case at
6 hand. And this includes family who may want to know what you
7 are doing.

8 I know that many of you have cell phones, other
9 types of tools. You must not use these tools to communicate
10 electronically with anyone about this case. This includes
11 family members and friends.

12 You may not communicate with anyone about this case
13 on your cell phone, through e-mail, Instagram, Snapchat, or
14 any internet or any technology they invent before we finish
15 this case. You just leave this technology alone, and it will
16 keep you out of trouble.

17 So you are excluded from using any technology, even
18 if I have not mentioned that technology. There's somebody
19 working on something right now.

20 Now, there are Rules of Evidence which control what
21 can be received into evidence. When a lawyer asks a question
22 or offers an exhibit into evidence and opposing counsel
23 thinks that it should not be permitted into evidence or the
24 question is improper, that counsel may object.

25 If I overrule the objection, it means that the

1 question may be answered or the exhibit may be admitted. If
2 I sustain the objection, the question cannot be answered, or
3 the exhibit cannot be received. When I sustain an objection
4 to a question, you must ignore the question. Do not
5 speculate about what the witness probably would have said if
6 the judge hadn't stopped him.

7 Also, you must not be prejudice for or against any
8 party for objecting, whether the Court sustains or overrules
9 the objection. It is the duty of lawyers to object when they
10 believe that it's appropriate.

11 Sometimes the Court may order that evidence be
12 stricken from the record, that you disregard or ignore the
13 evidence. I guess it's somewhat like unringing a bell that
14 you heard. But it simply means that when you are deciding
15 the case, you must not consider the evidence which the Court
16 told you to disregard. It cannot weigh into your
17 consideration.

18 Sometimes evidence is admitted for a limited
19 purpose. When the Court instructs you that an item of
20 evidence is coming in for a specific purpose, you must limit
21 your consideration of that evidence to the purpose for which
22 the Court admitted it.

23 Now, in deciding this case, you will have to decide
24 which witnesses to believe, which witnesses not to believe.
25 You may believe everything a witness says, only part of it,

1 or none of it. The choice is yours.

2 In deciding what to believe, you may consider a
3 number of factors, including the witness's ability to see or
4 hear or know the things a witness testifies about; the
5 quality of the witness's memory; the witness's manner while
6 testifying on the stand; any interest the witness may have in
7 the outcome of the case; or any motive, bias, or prejudice
8 the witness may have; any contradiction of the witness by
9 anything the witness said or wrote or did before trial; or
10 contradiction of the witness by other evidence; and certainly
11 you may consider the reasonableness of a witness's testimony
12 when considered in the light of other evidence which you do
13 believe.

14 Now, limitations, ladies and gentlemen, are imposed
15 on the ability of a witness to give an opinion. A witness's
16 testimony may be limited to facts as to what happened or what
17 was seen or done.

18 Where, however, a witness has some specialized
19 knowledge concerning a particular subject matter which might
20 assist an ordinary jury and an ordinary judge to understand a
21 complicated or technical field, that witness is called an
22 expert witness, and that witness is permitted greater
23 latitude in giving opinions.

24 There will be, as the Court understands it, an
25 expert witness in this case. You should endeavor to evaluate

1 the testimony of an expert witness just as you evaluate the
2 testimony of any other witnesses under the factors the Court
3 mentioned a few seconds ago.

4 But additionally, in the case of an expert, you
5 should evaluate the expert's training, qualifications, and
6 knowledge of the subject matter concerning which the expert
7 is testifying.

8 Of course, you should realize that the testimony of
9 an expert is no more controlling than that of any other
10 witness because it is your judgment in final analysis which
11 will decide the questions of credibility; what to believe and
12 what not to believe.

13 This is a criminal case, ladies and gentlemen, as
14 the Court told you early on. There's some basic rules that
15 apply to a criminal case that you need to keep in mind.

16 First, each defendant is presumed innocent until
17 proven guilty. This indictment against each defendant
18 brought by the United States is only an accusation, nothing
19 more. It is not proof of guilt or anything else. Each
20 defendant, therefore, starts out with a clean slate.

21 Second, the government has the burden of proof in a
22 criminal case. A defendant has no burden to prove his
23 innocence or to present any evidence or to testify. And
24 since the defendant has the right to remain silent, the law
25 prohibits you, in arriving at your verdict, from considering

1 that any defendant in this case may not testify.

2 Third, the government must prove the defendant's
3 guilt beyond a reasonable doubt. The Court will give you
4 further instructions before you go out to deliberate on this
5 point. But bear in mind that this is a criminal case. It's
6 different from a civil case where there's a lesser burden of
7 proof.

8 Now, the Court has instructed you that these
9 defendants are charged with conspiracy to commit mail fraud
10 and wire fraud, and wire fraud and mail fraud, and some
11 engaging in unlawful monetary transactions; sometimes called
12 money laundering.

13 You will be given detailed instructions on what the
14 United States is required to prove beyond a reasonable doubt
15 to convict either of these defendants.

16 Let me say a few words about your conduct as jurors.

17 First, I reiterate, restate, do not talk to each
18 other about this case, about anyone else who has anything to
19 do with it, until you retire to deliberate.

20 When the Court says do not talk to anyone else, I
21 emphasize again, do not go home and let your family debrief
22 you or interrogate you. Do not discuss this case with them.
23 You put them off until after the verdict has been achieved.

24 Do not talk to witnesses that you may see. If you
25 meet one of the witnesses or one of the attorneys in the

1 elevator or someplace, do not discuss anything with them.

2 And don't let them discuss anything with you.

3 Also, while you may not go on the internet, you may
4 take the daily paper -- the Court doesn't know -- or some
5 other newspaper. Do not read any stories or anything in
6 print or anything about this case. Do not follow any
7 television reports or radio reports. In other words, don't
8 let anything infect your mind about this case or in any way
9 sway you about this case. The Court has already emphasized
10 that you will not do any research.

11 Finally, the Court will simply say, ladies and
12 gentlemen, do not make up your mind about what the verdict in
13 this case should be until after you have heard all the
14 evidence, received instructions of the Court, and deliberated
15 with your fellow jurors.

16 It should be remembered that the lawyers and the
17 parties and their representatives, under no circumstances,
18 can talk to you or socialize with you during the course of
19 this trial.

20 You will note we have a court reporter here taking
21 down every word said. However, at the end of this trial, you
22 will have to make your decision based on what you recall of
23 the evidence. You will not have a transcript to consult.
24 This is not what happens on TV or in some other courts around
25 the country. There will be no read back of testimony.

1 Now, this is a difficult proposition to be reading
2 back testimony to the jury. So the Court encourages you to
3 pay close attention. Ordinarily, the Court doesn't encourage
4 note-taking, but this case is going to be long, so the Court
5 will give you a legal pad that you can put your name on to
6 take notes. They are your notes, not some other juror's
7 notes.

8 If you choose to take notes, the Court will give you
9 an instruction about how to treat your notes. Do not be
10 distracted by your note-taking. Pay close attention to what
11 is going on. You will put your name on the notes and leave
12 those notepads when you leave at the end of the day.

13 You will not be permitted to ask questions of the
14 jury -- or the attorneys during the case, so please do not
15 interrupt the lawyers during their examination of witnesses
16 or otherwise. If you are unable to hear or see, you raise
17 your hand, and we will attend to that issue.

18 One other thing. The temperature in this courtroom
19 is controlled from somewhere in America; I think it's
20 Philadelphia or someplace. When we want heat, we have to
21 call up GSA and get them to adjust the thermostat, so the
22 Court would encourage you to bring something that you can put
23 on or take off depending on whether you're cold or whether
24 you're hot.

25 Let me outline for you how this trial will run here:

1 Generally, we start around 9:30 or 10:00. We're
2 going to start most days at 10:00, and some days the Court
3 might move it back to 9:30. We will take a lunch break
4 usually at 1:00 p.m. During the morning, usually every hour
5 and a half, two hours at the most, the Court will take a
6 15-minute break. That doesn't mean the Court won't do an
7 emergency break. If there's an emergency, then we'll take a
8 break. Otherwise, we will follow that pattern.

9 We will try to go to 5:00 or 5:30. It's rare that
10 the Court will go to 6:00. It all depends upon where we are
11 and whether we have a witness that we have to finish. But
12 the Court intends for everybody to go home for dinner. We're
13 not cooking dinner around here.

14 From time to time during the course of this trial,
15 it will be necessary to confer with the lawyers, and we're
16 not going to be sending you back out to the jury assembly
17 room that you're using. So we're going to end up using this
18 technology here that we used during the voir dire. Make
19 every effort not to listen at what the Court is trying to do
20 or what we're trying to resolve because by law there's some
21 things that you cannot get involved in or hear.

22 Now, let me give you an instruction on how this case
23 will work here.

24 We will start with opening statements. An opening
25 statement is nothing but an outline of what the prosecution

1 or the defense, if they want to put on evidence, will show
2 you. It's an outline of the case. It's not the evidence.
3 It's an outline. After the opening statement by the
4 prosecution, if the defense wishes to make an opening
5 statement -- they are not required to do so -- they will do
6 so.

7 After the opening statements, the first witness will
8 be called by the United States. Any witness called may be
9 cross-examined by the opposing side. Once the United States
10 has gone through all of its witnesses, the Court will give
11 the defendants an opportunity to produce evidence if they
12 wish to. They are not required by law to produce anything.

13 If the defendants should happen to call any
14 witnesses, they will be subject to cross-examination by the
15 prosecution team. If they produce any witnesses, since the
16 United States has the burden of proof, the law gives the
17 United States an opportunity to call rebuttal witnesses. If
18 they want to put on rebuttal witnesses, they may do so.
19 Those witnesses would be subject to cross-examination by the
20 defendants' counsel.

21 When all the evidence is in, the Court will have to
22 meet with counsel to let them know what those detailed
23 instructions will be that the Court will give you for your
24 deliberations.

25 Then we will return to court for closing arguments.

1 First the United States will make a closing argument about
2 what they think the evidence has proved to persuade you to
3 return a verdict for the United States. The defendants may
4 also make a closing argument to persuade you to return a
5 verdict for the defendants. And once again, because the
6 United States has the burden of proof, the law gives them an
7 opportunity for a rebuttal closing argument.

8 When all of that is finished, the Court will then
9 read to you in detail every single instruction that you need
10 to deliberate. Those instructions the Court reads to you
11 will be given to you in writing, capitalized, double-spaced,
12 and indexed so you can go back to whatever instruction you
13 have some question about, and you can find it and reread it.

14 That's the way it will work.

15 Now, if no alternate juror has been excused -- only
16 12 will be permitted in the jury room. While the Court may
17 send 12 back there and excuse six, you still cannot discuss
18 the case with anyone because you need to wait, because if you
19 need to be called back in here for some purpose to replace
20 someone, we don't want you out there having been tainted by
21 your discussion with somebody else. You still have got to
22 wait until the verdict is in in the event you need to be
23 called back to replace someone who is deliberating.

24 Ladies and gentlemen, that's all the preliminary
25 instructions the Court will give you. The Court will give

Opening Statement - By Ms. Yusi

1 you other instructions as we go through this case.

2 We are at the stage now where we're going to try to
3 get through the opening statements. I don't know whether
4 we're going to be able to put on any witnesses today or not.
5 If we are, hopefully they will be -- they can be short, or
6 whatever. I will wait and see where we are at the end of the
7 closing statements.

8 Okay. Is the United States ready to start?

9 MS. YUSI: We are, Your Honor. First we would like
10 to make a motion to sequester all witnesses.

11 THE COURT: Any persons in the courtroom who are
12 witnesses, potential witnesses, please go to the witness
13 conference room at this juncture.

14 I think we have all persons who are supposed to be
15 in here in here.

16 MS. YUSI: May it please the Court, counsel, court
17 staff. Ladies and gentlemen, this case is about lies and
18 greed. As the evidence will show, from 2011 to 2017,
19 defendants David Alcorn and Aghee William Smith, along with
20 others, were members of a nationwide conspiracy to sell bogus
21 investments to unsuspecting victims.

22 You will hear from victims of this conspiracy from
23 here in the Tidewater area, and you will hear from victims
24 from California and out west as well. You will hear all
25 about the lies and greed that bring us to court today.

Opening Statement - By Ms. Yusi

1 One of these victims is Ms. Sharyon Bean. Sharyon
2 Bean will tell you how she worked for 25 years at a local
3 telephone company in Northern California until she had to
4 retire early due to a medical condition. She wasn't able to
5 save for retirement when she was working because there simply
6 wasn't any money to save.

7 Much to her surprise, in 2017 Ms. Bean got a letter
8 from AT&T saying she had approximately \$100,000 in
9 back-pension from her time with the phone company years
10 before. Ms. Bean had no idea this was coming. She did not
11 know what to do with it, so she talked to her friend Aghee
12 William Smith, who she knew as Bill Smith. She knew Bill
13 Smith from her spiritual study group.

14 Bill Smith told Ms. Bean that he had been investing
15 people's money for retirement for over 40 years. Bill Smith
16 knew this was all Ms. Bean had for her retirement, and he
17 knew that she did not know the first thing about investing.
18 Bill Smith convinced Ms. Bean to put \$25,000 into a highly
19 speculative, unproven investment called Xcel, which had to do
20 with wireless spectrum.

21 Now, the evidence will show Xcel was the latest
22 investment in a long line of failed spectrum investments that
23 all started with Defendant David Alcorn helping to create and
24 run a company called Janus Spectrum.

25 Bill Smith told Ms. Bean that her money would be

Opening Statement - By Ms. Yusi

1 safe, and Ms. Bean trusted him. What Bill Smith didn't tell
2 Ms. Bean was that he had been dealing with the same group of
3 businessmen selling similar kinds of investments for years.
4 He never told her that none of his clients had ever made any
5 money on these investments.

6 He never told her that he had to testify before the
7 Arizona State Corporation Commission regarding his
8 involvement with another fraudulent investment involving one
9 of the same businessmen who created the spectrum investments
10 with David Alcorn.

11 He never told Ms. Bean that some of the managers of
12 this investment had been banned from selling securities by
13 the United States Securities and Exchange Commission. He
14 never told Ms. Bean that one of the prior investments had
15 filed for bankruptcy.

16 He never told Ms. Bean that the spectrum investments
17 were under investigation at the time Ms. Bean gave him her
18 money. Ms. Bean lost everything, and Ms. Bean's story,
19 ladies and gentlemen, is why you are here for trial. She is
20 just one victim that you will hear from who were lied to by
21 Bill Smith, David Alcorn, and other conspirators.

22 As you will hear and see from these witnesses and
23 the documents, this was a scheme perpetrated for over six
24 years, fleecing victims from hard-earned money, many times
25 their entire retirement, all to benefit the defendants and

—Opening Statement - By Ms. Yusi—

1 their cohorts.

2 Ladies and gentlemen, my name is Elizabeth Yusi, and
3 along with Melissa O'Boyle and Andrew Bosse, we represent the
4 United States in this case.

5 Right now, as the judge told you, I have the
6 opportunity to give you an outline of what we expect our
7 evidence will show, and I'm going to briefly review the
8 charges or the crimes that the defendants are charged with
9 and that you'll be considering in this fraud case against
10 Defendant David Alcorn and Defendant Aghee William Smith, or
11 as you'll hear him called, Bill Smith.

12 What I say now or what the other attorneys say is
13 not evidence in this case. The evidence is going to come
14 from the witness testimony and from documents you will be
15 able to look at for yourselves. These documents and those
16 witnesses are going to paint a disturbing picture of a
17 massive fraud and conspiracy which was driven by greed.

18 The evidence will show that these two defendants,
19 David Alcorn and Bill Smith, took in millions of dollars from
20 unsuspecting investors, who were just trying to save for
21 retirement, all for greed.

22 During this trial, as I mentioned, many witnesses
23 you will hear from are the victims of this fraud. And as I
24 mentioned, some are from right here in the Tidewater area.
25 They were sold these investments, including the ones created

Opening Statement - By Ms. Yusi

1 and led by David Alcorn, by a man named Daryl Bank, and
2 others, through a company called Dominion Investment Group,
3 which used to have a company or an office in Virginia Beach.

4 Because the sales to the people were here in
5 Virginia and the use of wires and money going in and out of
6 Virginia and banks, that's why we're here in Norfolk for
7 trial. Other victims you will meet are from the West Coast
8 and elsewhere.

9 These victims were sold these investments by
10 insurance salesmen like Defendant Bill Smith and others like
11 Tony Sellers and Tom Barnett. And while David Alcorn was
12 actually a creator and manager of the spectrum investment,
13 he, too, also sold investments directly to victims. And you
14 will hear from a few of those people that he sold directly
15 to.

16 What you will hear from these victims are that they
17 trusted their salesmen. They trusted Bill Smith and others
18 to look after their best interests. They thought that Bill
19 Smith, David Alcorn, and others were telling the truth, and
20 they thought they were being sold legitimate, proven, safe
21 investments. They trusted these defendants running the
22 investments knew what they were doing, and the evidence will
23 show that none of this was the case, and these victims were
24 duped.

25 The evidence will show that there's a number of

Opening Statement - By Ms. Yusi

1 people involved in this fraud. There's plenty of blame to go
2 around, and many had a role to play in this fraud. In this
3 trial, though, we're only focusing on these two defendants.
4 That doesn't mean that there are not others responsible. And
5 you will actually hear from some of those people, some
6 people's names who were involved as well. You will even hear
7 in testimony from a few who have been convicted of this
8 conspiracy as well.

9 To break it down to simple terms, you had basically
10 two categories of bad actors:

11 The first were the insiders, the people that ran and
12 created the investment or the business themselves, like David
13 Alcorn is one of those that ran the fraudulent investment and
14 was one of those in charge; and the second category were
15 those that sold the bogus products, like Bill Smith, though I
16 did mention David Alcorn sold a few, too, directly.

17 You will hear from those who helped run the
18 businesses, like Raeann Gibson, who is already convicted for
19 her role in this scheme and who worked at Dominion Investment
20 Group in Virginia Beach. She will talk about how these
21 investments worked in terms of where the money went once they
22 got it from victims.

23 You will also hear from attorneys who advised these
24 businessmen; sometimes warning them to stop. And you will
25 hear about the enormous amount of money going to these

Opening Statement - By Ms. Yusi

1 insiders including to David Alcorn and to salesmen such as
2 Bill Smith.

3 In terms of the salesmen, you'll also hear from Tony
4 Sellers, who helped sell these investments, how he helped
5 further these lies and has already been convicted for his
6 role in this scheme. He will explain how the information
7 flowed from the investment companies to the salesmen to the
8 investors and how they sold these investments.

9 You will hear about the money the salesmen were
10 being paid by the companies, including to Bill Smith. You
11 will even see how Bill Smith was making overrides on many
12 sales, meaning he got paid thousands of dollars on other
13 people's sales in addition to his own sales.

14 Now, exactly what were David Alcorn and Bill Smith
15 selling? You will mostly hear about two types of
16 investments, the first being Dental Support Plus Franchises.
17 Sometimes you'll hear it called DSPF or DSP. These
18 franchises were supposed to help dentists and patients find
19 each other, and the investors who bought the franchise would
20 get a percentage of the money paid to those dentists as their
21 profit.

22 The second investment that I'll talk about is what I
23 will refer to as spectrum investments. They go by several
24 names -- Xcel, Janus Spectrum, Eagle Spectrum, Western
25 Spectrum, Spectrum 100 -- but they all had to do with buying

Opening Statement - By Ms. Yusi

1 wireless spectrum licenses from the federal government.

2 To talk a little bit more about the DSPF, or the
3 Dental Support Plus Franchise investment, the evidence will
4 show that in around 2010, a man named Kent Maerki and his
5 wife, Norma Jean Coffin, another one responsible for this
6 fraud, and others created DSPF in Arizona where Kent Maerki
7 and his wife lived.

8 DSP was supposed to sell franchises to investors
9 that were then being tied to dental patients, and the
10 investors, as I mentioned, would get a percentage of their
11 fees to the dentists. They sold DSPF for \$20,000 apiece and
12 then \$25,000 apiece, and then \$30,000 per franchise. The
13 more an investor bought, the more they would earn, is what
14 they were told.

15 DSPF printed a brochure and other marketing
16 materials, and you will see those materials in this trial.
17 The ad said the investors would get up to 40 to 60 percent
18 return on their investments, and while this was named a
19 franchise investment, DSPF sold this to investors as
20 completely hands-off. They would not have to lift a finger
21 to run them. DSPF in Arizona would take care of the running
22 of the franchises if you just gave them their money.

23 You will see the advertisement stated that there's a
24 five-year proven track record showing that this is a
25 successful investment, but yet another advertisement stated

Opening Statement - By Ms. Yusi

1 that DSPF had a nine-year track record showing this was
2 successful. And time was of the essence; investors needed to
3 get in early so they could get the first patient's money --
4 first patients to start making their money.

5 Kent Maerki and Daryl Bank recruited salesmen from
6 across the country to sell these franchises, and they started
7 selling them in January 2011. Defendant Bill Smith, a
8 licensed insurance salesman from California, started selling
9 DSPF in January 2011.

10 You'll hear and see from witnesses that he sold
11 Dental Support Plus Franchises mainly to older folks who were
12 looking to figure out their money for retirement. Bill Smith
13 sold DSPF mainly to clients who had no investment background
14 at all and relied on him to look after their best interests.

15 Bill Smith told these clients that DSPF was a great
16 investment, a sure thing, their money would be safe and only
17 grow. He told them they'll start making money in about four
18 to six months, which was a quick return on their initial
19 investment into the franchise.

20 Bill Smith sold these franchises for over two years,
21 into 2013, never changing his pitch, ensuring these clients
22 that this was a great investment. He told some of these
23 clients that he had invested his own money in these
24 franchises, so he knew firsthand it was a great business.

25 What did Bill Smith not tell them? The evidence

Opening Statement - By Ms. Yusi

1 will show that Bill Smith had never invested in DSPF
2 himself -- never. Bill Smith did not tell his clients that
3 since the very first Dental Support Franchise that he sold in
4 January 2011, the investment was a failure.

5 From the very first investor, DSPF never worked. A
6 few people may have made a few hundred dollars at the very
7 beginning, but these were pennies on the tens of thousands of
8 dollars they had invested and lost.

9 Did Bill Smith warn his clients after a few months
10 of selling DSPF that they were not working? Did he warn his
11 clients that these investments were high risk, that they may
12 fail, that he knew they could fail? No. Did he tell them
13 that he had clients that were contacting him that were very
14 upset? He never told any of his new clients anything about
15 that and kept selling.

16 This continued until August 2014 when Kent Maerki
17 finally shuttered DSPF and told the investors it was done.
18 Bill Smith was certainly not the only salesman who told these
19 lies. Unfortunately, he was one of many who sold millions of
20 dollars in these franchises to unsuspecting clients.

21 You will hear from Tidewater victims who were sold
22 DSPF right down the street from where we are. But Bill Smith
23 is a salesman, and others sold it too, but he is the salesman
24 that we are considering in this trial.

25 I want to talk to you about the second investment,

Opening Statement - By Ms. Yusi

1 the spectrum investments. This is where David Alcorn fits
2 in. He was one of the creators and masterminds and partner
3 with Kent Maerki, the same mastermind behind the dental
4 franchises in 2011, to create this spectrum investment. Who
5 else sold spectrum investments for David Alcorn? Bill Smith.

6 Now, actually, what is wireless spectrum that these
7 defendants sold? Wireless communications -- phones, tablets,
8 computers using Wi-Fi -- don't use phone lines, they use
9 invisible airwaves known as spectrum.

10 In our country, the government owns the spectrum
11 frequencies, and they grant licenses to companies to use the
12 spectrum. There are all sorts of spectrum. Some of it is
13 very valuable, like the kind of broadband spectrum Verizon,
14 Sprint, AT&T, T-Mobile run their network on. And these
15 companies get their licenses through highly competitive
16 auctions that cost them billions, billions of dollars. Other
17 sorts of spectrum are not valuable at all.

18 As the evidence will show, the kind that's not
19 valuable to major cell phone carriers were what David Alcorn
20 and Bill Smith were selling as beachfront-property spectrum,
21 the Rolls Royce of spectrum. The evidence will show this was
22 simply not the case. This was not the valuable type of
23 spectrum they touted it to be.

24 You will hear from the government's expert, Coleman
25 Bazelon, who will explain to you how these spectrum

—Opening Statement - By Ms. Yusi—

1 investments were not valuable and explain the reality behind
2 the lies David Alcorn and Bill Smith were touting. But as
3 you will see from the evidence, reality did not matter to
4 Defendant Alcorn or Defendant Smith.

5 In 2011, Alcorn, Maerki, Daryl Bank, and others
6 created the spectrum investments. They and their salesmen,
7 like Bill Smith, continued to sell these as safe investments,
8 sure things, and developed spreadsheets to show investors the
9 thousands of dollars that they would earn if they invested.

10 You will see that one of the projections used to
11 sell the investments showed an annual return of 2,000 percent
12 for an investment in just one economic area. Another
13 marketing document showed investors would make tons of money
14 saying "Investors are provided with opportunities to achieve
15 100 percent annual preferred return on invested capital plus
16 50 percent of annual additional profits."

17 The evidence will show the defendants and others who
18 developed and marketed spectrum investments bragged to
19 potential investors that Janus Spectrum, the company that
20 David Alcorn co-founded, was stacked with people that had
21 made millions of dollars through spectrum and had been in the
22 industry for decades.

23 In reality, back in 1986, Kent Maerki, David
24 Alcorn's partner, had been barred by the Federal Trade
25 Commission from making misrepresentations about wireless

Opening Statement - By Ms. Yusi

1 spectrum applications. No one ever told the investors that.

2 All of this may sound too good to be true, with the
3 2,000 percent return, 150 percent return, but these clients
4 were trusting Bill Smith, David Alcorn, and others who were
5 selling -- kept telling them that this was true. You will
6 see these marketing materials and those lies in evidence
7 submitted at trial.

8 For example, you will hear that David Alcorn and
9 Bill Smith told investors that Sprint and other major cell
10 phone carriers would pay for the investors' licenses, and
11 this would create massive returns and profits to the
12 investors. This was never true, and the evidence will show
13 that. That is just the hook that they used to lure the
14 investors into giving them their money. It just wasn't true.

15 You will also see that the U.S. Securities and
16 Exchange Commission started to investigate the spectrum
17 investments in 2013. They sent subpoenas to David Alcorn's
18 company. David Alcorn knew this. He talked about it on
19 conference calls to the salesmen, one of whom was Bill Smith.

20 What did the defendants do? Did they move on from
21 trying to sell these types of licenses of airwaves? No.
22 They created another company called Xcel. No one ever told
23 the investors that put money into Xcel that this was just the
24 latest in a long line of failed investments David Alcorn and
25 Kent Maerki were involved with, that Bill Smith had been

—Opening Statement - By Ms. Yusi—

1 selling these failed investments for years. No. They just
2 kept convincing clients to give them their hard-earned money.

3 You will see that Janus Spectrum, the main spectrum
4 company, filed bankruptcy in 2014. Did they stop selling or
5 reconsider things? No. And no one told the investors this
6 before they put their hard-earned money into this investment.

7 Bill Smith, David Alcorn, and others, you'll hear,
8 continued to sell this junk from 2011 to 2017. They never
9 stopped. And no one was making money except for them.

10 The defendants continued to sell millions of dollars
11 of these investments because they were making tons of money.
12 Sometimes the companies took 40 percent straight off the top
13 of these victims' money. Sometimes they took 70 percent
14 straight off the top.

15 They paid Bill Smith his commission for selling this
16 fraudulent investment, and David Alcorn would transfer
17 hundreds of thousands of dollars to his own bank account so
18 he could do whatever he wanted with it. It's pure and simple
19 greed, ladies and gentlemen.

20 I want to briefly talk to you about the indictment,
21 which is the charging document that lists the laws that the
22 defendants are charged with breaking.

23 David Alcorn and Bill Smith are charged together in
24 12 counts in this indictment, and then Bill Smith has an
25 additional count, as well as David Alcorn has an additional

—Opening Statement - By Ms. Yusi—

1 count. So in total, there are 14 pending counts in the
2 indictment. Each count is alleging a separate crime.

3 At the end of this trial, before you deliberate,
4 you're going to get instructions on the law and on these
5 charges from Judge Jackson, and so I'm only going to describe
6 the charges briefly here before I wrap up, and they fall into
7 two groups.

8 First, mail and wire fraud charges. Both defendants
9 are charged with a conspiracy to commit mail fraud and wire
10 fraud and 11 individual counts of wire fraud, which relate to
11 11 times where money was taken from victims, were wired
12 between bank accounts, in and out of our district, the
13 Eastern District of Virginia, or when national conference
14 phone calls were made for talking to insiders and salesmen
15 about the investments.

16 These fraud charges are straightforward, based on
17 the scheme that I just described to you; the
18 misrepresentations and omissions in how these investments
19 were sold, the statements designed to stop the investors from
20 finding out what happened to their money, and the looting
21 from victims who thought they were making legitimate
22 investments, not handing their money to defendants and others
23 so they could spend it on themselves.

24 The last charge is a money laundering charge, and
25 that only deals with Mr. Alcorn here. It's based on David

Opening Statement - By Ms. Yusi

1 Alcorn and what he did with the money after the victims paid
2 for the investments. It concerns the movement of the
3 victims' money from company to company, from bank account to
4 bank account, before it ends up paying for David Alcorn's
5 million-dollar home.

6 Ladies and gentlemen, this is just an outline of the
7 evidence I expect you are going to hear during the
8 government's case. And you'll be hearing from a lot of
9 witnesses, including some who helped these men carry out this
10 fraud. You will hear from victims of fraud. You'll hear
11 from the expert.

12 The government expects that the defendants will
13 attempt to blame others for their crimes, like Daryl Bank or
14 Kent Maerki. However, ladies and gentlemen, keep in mind
15 that the evidence will show that Bill Smith and David Alcorn
16 started working with Daryl Bank and Kent Maerki in 2011 and
17 continued to work with them through 2017.

18 The evidence will show they continued to work with
19 them through regulatory investigations, a corporate
20 bankruptcy, complaints from investors who lost their life
21 savings, and they continued to work with them after
22 investment after investment failed, over six long years,
23 never telling the investors of all the bad facts they
24 personally knew.

25 And you may hear an argument the defendants hoped

—Opening Statement - By Ms. Yusi—

1 that these investments were going to turn around. But,
2 ladies and gentlemen, for what they hoped for is not the
3 issue in this case. What is the issue is that the investors
4 were told what they were told and what they were not told.
5 They were never told that there was anything to fix in these
6 investments. They were told these were safe, solid
7 investments.

8 We ask for your patience as we put witnesses on
9 because we don't always get them in the order that we
10 necessarily like because of travel issues and COVID issues.
11 And you are going to see a lot of exhibits and names and
12 dates.

13 Judge Jackson, as he mentioned, allows jurors to
14 take notes, and we encourage you to do so if you think that
15 would be helpful, but what the evidence will show and what
16 you are going to find out at the end of this case is that
17 while the scheme was carried out in a complex manner, using
18 shell companies, money laundering, changing names of
19 companies, et cetera, the crimes the defendants committed
20 were straightforward.

21 The evidence will show that the defendants told lies
22 to investors to convince them into handing over their savings
23 to buy fraudulent investments and that then the defendants
24 took that money. It's theft, pure and simple.

25 By the end of this case, it's going to be clear that

Opening Statement - By Mr. Yarow

1 this was fraud from top to bottom. You will hear that this
2 was not some -- you will hear that this was not some
3 misunderstanding. These were not proper fees or payments to
4 the conspirators. This is not how real investments work.
5 This was just fraud. These guys knew it, and you will too.

6 We will have another chance to address you at the
7 end of this case in closing arguments, and at that point, we
8 will ask the jury to find the defendants, David Alcorn and
9 Aghee William Smith, guilty on all counts.

10 Thank you.

11 THE COURT: Thank you.

12 Mr. Yarow?

13 MR. YAROW: May it please the Court.

14 My name is Rick Yarow. I'm an attorney here in
15 Norfolk, and I represent David Alcorn, Mr. Alcorn, and also
16 you will hear "David." That's my client. And I want to
17 thank you very much for serving on the jury, particularly
18 during these difficult times.

19 We have to wear a mask all day long while you're in
20 here, and it's not the most comfortable thing, but this is a
21 very important day for my -- or month, really, for that
22 matter, for my client David.

23 The subject matter that my client is charged with,
24 as the government alluded to, has nothing to do with the DSP.
25 You are going to hear witnesses concerning the Dental

Opening Statement - By Mr. Yarow

1 Support, and my client really had nothing to do with that.
2 What my client is accused of having something to do with is
3 the spectrum investments.

4 It's a complicated subject. It took me quite a
5 while to learn. There's a lot of terminology that most
6 people are not going to be familiar with, and there's going
7 to be a lot to learn as you go through the evidence and you
8 hear what the evidence is.

9 David's company was called Janus Spectrum LLC. As
10 the government also alluded to, there's a lot of names that
11 you're going to hear that sound very familiar to each other.
12 You are going to hear Janus this, you're going to hear
13 Spectrum this, Spectrum 100. You're going to hear different
14 names that are different derivatives of those two words, but
15 there's one company that my client was involved with, which
16 was Janus Spectrum LLC -- or that he owned, which was Janus
17 Spectrum LLC.

18 David is a 77-year-old man, and after having spent
19 nearly his entire career in commercial real estate sales, he
20 hit a roadblock in 2008 with the Great Recession. Most of
21 you will remember. Some of you may not be old enough, but it
22 was a very difficult time, and the real estate market
23 collapsed. And during that period of time, the commercial
24 real estate business that Mr. Alcorn, David, had been
25 involved with his entire professional career had dried up.

Opening Statement - By Mr. Yarow

1 After having spent decades in this business,
2 Mr. Alcorn found himself having to go out and find another
3 field of work to support himself and his wife. David, during
4 a dinner conversation, heard about a company that was hiring
5 from a family friend. The name of the company was SmartCOMM.

6 SmartCOMM had a business model that was to prepare
7 and submit spectrum license applications to the Federal
8 Communications Commission. We're going to refer to that as
9 the FCC, Federal Communications Commission.

10 On behalf of their clients in the spectrum bands of
11 the -- or the spectrum guard bands, which is also very
12 complicated -- I'm not going to go into it in opening, but
13 you will probably hear from an expert brought in by the
14 government who, I think, will probably do a very good job --
15 or try to do a very good job explaining what exactly the
16 expansion band is within the spectrum.

17 David was hired at SmartCOMM as an independent
18 marketing rep, and he continued to work there from 2010 until
19 2011. This is the time that David was first introduced to
20 the word "spectrum." He had no background in it. David had
21 no prior experience. And he was not a technically savvy
22 person. He had a lot to learn.

23 The evidence at trial, I suspect, will show David
24 received training and an introduction to spectrum, and more
25 specifically the guard band, that had recently become

Opening Statement - By Mr. Yarow

1 available due to the rebanding act of 2004 while working at
2 SmartCOMM.

3 It was at SmartCOMM where David was first introduced
4 to Kent Maerki and Pendleton Waugh. You may hear some things
5 about Pendleton Waugh. You're going to hear a lot today
6 about Kent Maerki -- I'm sorry, this month about Kent Maerki.

7 Pendleton Waugh will be described by witnesses as
8 the genius in the backroom who really understood all this
9 complicated stuff and business to do with spectrum. David
10 would later come to learn that Waugh was not such a great
11 person and that some of the things he had been told by Waugh
12 may not have been correct and that Waugh had a troubled past.

13 It will be testified to that Kent Maerki was revered
14 at SmartCOMM as an expert in the spectrum, in the
15 800-megahertz guard band, and someone who had done very well
16 in the spectrum business in the 1980s. He was also
17 considered by everyone at SmartCOMM to be the go-to person.

18 It was at SmartCOMM where David was told by
19 Pendleton Waugh and Carole Downs, who also owns SmartCOMM,
20 that this spectrum would be enticing to Sprint and other cell
21 phone carriers, and Kent Maerki corroborated the belief
22 during David's training and held that it would be very
23 profitable.

24 The evidence will show that David was told, and he
25 was trained, that guard band could be used for cell phones,

Opening Statement - By Mr. Yarow

1 that spectrum had limited availability. There was no more of
2 it being created; it was a finite source. The FCC had
3 estimated the value on this guard band, based on previous
4 sales at auctions in the 1980s, that 800 megahertz, which is
5 where the guard band is located within the spectrum, is
6 desirable for cell phone usage because it can permeate
7 buildings and transmit further. The guard band could be
8 integrated with broadband with FCC waivers and proper
9 technology.

10 David believed he did his due diligence. He
11 believed these things that SmartCOMM told to him and that
12 there was a real opportunity. David himself purchased
13 SmartCOMM applications for himself and also family members.
14 He bought into what he believed.

15 Over time, David became disillusioned with SmartCOMM
16 in the way he felt -- not the SmartCOMM product, but the way
17 that SmartCOMM treated their customers. But based on what he
18 learned and heard at SmartCOMM, the guard band seemed to
19 present a tremendous opportunity.

20 It was at this time that David chose to leave
21 SmartCOMM and start his own venture to reform the SmartCOMM
22 business model. The evidence will show that David lacked the
23 confidence to set out on his own and felt it was necessary to
24 have Kent Maerki's expertise available to him, and Kent was
25 offered a minority ownership in what became known as Janus

Opening Statement - By Mr. Yarow

1 Spectrum. David owned 55 percent; Kent owned 45 percent.
2 Later, David would also learn that Kent was not such a savory
3 character, and he bought Kent out of that business. He
4 ejected Kent from that business.

5 The Janus Spectrum business model was to prepare and
6 sell application services and to assist the license holders
7 with monetization of those licenses. You will hear during
8 this trial that most of Janus Spectrum customers were not
9 individuals but entities formed to pull together funds to
10 purchase applications. Many of these customers and entities
11 had previously purchased applications in different markets
12 from SmartCOMM and were familiar with spectrum.

13 Most of the people that David sold to were
14 sophisticated investors that were -- that had formed LLCs or
15 different entities to group their money together to purchase
16 these applications.

17 While David's plan always included a fee for the
18 application services, it was also important for him to
19 collect a separate commission for potential monetization
20 services. You are going to hear a lot about this, I expect,
21 at trial.

22 David charged, in his contract with his clients, an
23 18 percent monetization -- 18 percent return on the
24 monetization. In other words, he would benefit if the client
25 benefitted, and you will also hear that that was very

Opening Statement - By Mr. Yarow

1 important to him. And this is something that he took, this
2 concept he took from his time in the commercial real estate
3 business where apparently this is also a concept.

4 David believed that the commission is where Janus
5 Spectrum would see the real profit because how lucrative he
6 was told the spectrum licenses were. At the conclusion of
7 the trial, it will be up to you to determine whether David's
8 belief was real and whether his intentions were genuine.

9 I would like you to remember this is a criminal
10 trial and not a civil trial. It is necessary for the
11 government to prove criminal intent beyond a reasonable doubt
12 to convict David of these charges. Therefore, I ask that you
13 focus throughout this trial, as you hear the evidence, on
14 David's intentions and not whether he was actually right or
15 wrong in his understanding of this spectrum, in the
16 intricacies of the technology.

17 At the end of the trial, I believe the evidence will
18 show that David believed in what he was selling -- the guard
19 band applications -- and that his clients would ultimately
20 benefit; and at the end of the trial, I will be asking you to
21 return a verdict of not guilty on all charges.

22 Thank you very much.

23 THE COURT: Thank you, Mr. Yarow.

24 Mr. Grindrod?

25 (Pause in the proceedings.)

—Opening Statement - By Mr. Grindrod—

1 MR. GRINDROD: May I proceed, Your Honor?

2 THE COURT: You may.

3 MR. GRINDROD: In a good con, the dupe doesn't know
4 he's been taken until it's too late, and you're going to hear
5 that Daryl Bank and Kent Maerki ran a great con. For years,
6 Kent Maerki and Daryl Bank lied, cheated, and stole millions
7 of dollars in retirement savings.

8 These two men ran a series of different companies
9 that projected great returns for investments. Maerki and
10 Bank recruited independent salespeople from around the
11 country to pitch these investments to everyday folks who were
12 saving for their retirements.

13 But the evidence will show that Bank and Maerki lied
14 about some aspects of these investments, that they hid
15 important information about the companies, and, most
16 importantly, that they straight up stole investor funds.
17 They spent millions on fancy watches, designer clothes,
18 whatever they wanted.

19 To pull off a massive fraud like this, Bank and
20 Maerki conned a bunch of people. They misled regulators,
21 they deceived accountants, they tricked investors, and the
22 evidence will show they conned their own salesmen. My
23 client, Bill Smith, was one of those salesmen. The evidence
24 will show that for several years, Mr. Smith sold investments
25 in companies, these companies we've just mentioned, and that

—Opening Statement - By Mr. Grindrod—

1 he made commissions on them.

2 I think Ms. Yusi is right, that the facts in this
3 case are complex, but the question at the end of the day is
4 pretty simple. Federal prosecutors think that Mr. Smith was
5 in on the fraud, so the question for you is this:

6 Is it clear beyond a reasonable doubt that Mr. Smith
7 was in on it? Or was he just one more person fooled by Kent
8 Maerki and Daryl Bank?

9 Ladies and gentlemen, my name is Andrew Grindrod.
10 Lindsay McCaslin and I represent Bill Smith. You may hear
11 him referred to as Aghee William Smith II or Aghee, but
12 generally people call him Bill. And Lindsay and I are
13 honored to represent him in these proceedings.

14 Long trials are tough, and COVID is not going to
15 make this one any easier. So the truth is that I think the
16 next four weeks are going to be a grind for you. But when
17 you're feeling like you just can't listen to any more talking
18 or look at any more documents, please pause for a moment and
19 reflect on how serious this is.

20 The jury in a criminal case is the ultimate
21 constitutional protection. The federal government cannot
22 take someone's liberty unless 12 everyday folks from the
23 community sign off on it.

24 You may hear the prosecutors say that they represent
25 the United States government, and they do. But in the "we

—Opening Statement - By Mr. Grindrod—

1 the people," you're the people. It's an incredible
2 responsibility. I thank you for serving on this jury, and I
3 would ask you to just try your best to pay attention to what
4 the evidence shows, as Ms. Yusi said, not what the lawyers
5 say or what we suggest, but what the facts actually show.

6 So I want to take you back about ten years. Bill
7 Smith is sitting in his office. He reaches for a folder of
8 materials, materials about various investments, just like he
9 had done many times before, because Bill had been helping
10 clients fund their retirements through annuities and life
11 insurance and stuff like that since 1970.

12 He's had some help here and there, but basically
13 he's a one-man operation. And over the years, you will hear
14 that about 80 percent of his business was insurance products.
15 Now, later in his career, Bill Smith had a radio program on
16 the local Christian radio station in Sacramento, California,
17 where he and his wife lived, and he used the radio program to
18 share his insights with listeners and also to generate new
19 business.

20 But for 40 years you will hear that he had been
21 talking to clients, showing them different options for their
22 savings and retirement, this annuity, that insurance policy,
23 and every time, with every client for 40 years, Bill Smith
24 built his business and his reputation.

25 You will hear that in 2011, Bill Smith started

—Opening Statement - By Mr. Grindrod—

1 showing people information about a company called Dental
2 Support Plus Franchise. Dental Support Plus Franchise, or
3 DSPF, had its corporate offices in Arizona, and it was run by
4 a man named Kent Maerki.

5 You are going to hear that name a lot over the next
6 few weeks, and the evidence is going to show that before Bill
7 Smith sold these franchises, he met with Mr. Maerki to learn
8 more about the company. You're going to hear about an
9 earlier company called Dazzle Dental, and Bill knew about
10 this company because he had some clients who invested in
11 that.

12 And you're going to hear that Dazzle Dental failed,
13 basically because it spent too much money. You're going to
14 hear that Dazzle built these large dental centers with
15 multiple dentists and patient rooms and equipment and office
16 space, and all that cost a lot of money. So even though
17 Dazzle was able to generate a lot of patients, it was just
18 too expensive to run these dental centers.

19 And Bill learned that Maerki's new company was not
20 going to run its own dental offices, with all those costs.
21 Instead, this new company was going to partner with existing
22 dentists and get patients for them. In other words, you're
23 going to hear that Maerki's plan was to take Dazzle's system
24 for getting new patients and to free it from those burdensome
25 costs.

Opening Statement - By Mr. Grindrod

1 The evidence will show that Bill Smith was
2 impressed, impressed with the plan, but maybe more
3 importantly, impressed with Kent Maerki. Maerki explained
4 how he had been involved in successful franchises before,
5 like Airport SuperShuttle, and Bill learned that Maerki's new
6 dental franchise company was working with this person who was
7 supposed to be an expert in franchising law, a woman who
8 you're going to hear come up frequently in this case, I
9 think. Her name is Lynne Shelton. She's the franchise
10 lawyer.

11 And you're going to hear that this franchise model,
12 the idea behind it, was supposed to be so that everyday
13 investors could get in on the action. It's not just for the
14 super-rich. And Bill had spent 40 years trying to help
15 everyday folks with their savings and retirement, so
16 naturally, he was excited.

17 And you'll hear that after visiting the company's
18 headquarters in Arizona, Bill was convinced. So he signed on
19 with Maerki to be one of many independent salespeople across
20 the country who would offer these Dental Support Plus
21 Franchises. You're not going to hear from many of those
22 salesmen in the course of this trial, but I think you're
23 going to hear from some.

24 The evidence will show that one of these salesmen, a
25 man named Tony Sellers, believed in this venture so much,

Opening Statement - By Mr. Grindrod

1 believed in this Dental Support Plus Franchise so much, that
2 he bought multiple franchises for himself. He put something
3 like \$200,000 of his own money in it.

4 You're also going to hear about another salesman, a
5 guy named Daryl Bank. He's an investment advisor in Virginia
6 Beach. The evidence will show that Daryl Bank started off as
7 a salesperson for Dental Support, but over time, he became
8 more and more involved with Maerki, more and more involved
9 with DSPF. Eventually, he became the national sales
10 coordinator for the company.

11 So Kent Maerki had all these independent salespeople
12 throughout the country, and the evidence will show that
13 DSPF's corporate office sent marketing materials to all these
14 salesmen. You'll hear that Mr. Smith received the marketing
15 materials from Maerki and that he used them. He used them
16 when he was talking to clients. But the evidence will show
17 that Bill Smith did not create those marketing materials or
18 come up with the information that was provided in it.

19 The evidence is going to show that those marketing
20 materials were created by Maerki and run through DSPF's
21 corporate lawyer, Lynne Shelton. Bill Smith took those
22 materials, took the information he was given, and passed it
23 along to his clients.

24 The evidence will show that Bill Smith sold dental
25 franchises from 2011 to 2013, and you're going to hear that

Opening Statement - By Mr. Grindrod

1 those sales ran through DSPF's lawyers at Shelton & Power.
2 That's Lynne Shelton's firm. You're going to hear that the
3 money went to Kent Maerki in Arizona.

4 The evidence is going to show that Bill Smith was
5 paid commissions, but the evidence is not going to show that
6 investor funds stayed with Mr. Smith. The evidence is going
7 to show that every penny that was supposed to go to DSPF went
8 to DSPF.

9 And over the years, Mr. Smith visited DSPF's
10 corporate offices in Arizona. He attended these weekly calls
11 that were held by Mr. Maerki about the company. And he also
12 received written materials about the company's performance,
13 again, from Mr. Maerki. And you're probably going to hear
14 about at least some of those calls. You may even hear some
15 of them. You're going to see some of those memos from Kent
16 Maerki.

17 The evidence will show that the consistent message
18 coming out of DSPF corporate, a message from DSPF insiders,
19 was that these franchises were going to succeed.

20 For example, in April 2013 -- so this is the end of
21 the time period when Mr. Smith was selling dental franchises.
22 In April 2013, there's a memo that you're going to see from
23 Kent Maerki saying that he expected 2013 to be a productive
24 and profitable year for all franchisees. He called DSPF a
25 strong, stable company.

Opening Statement - By Mr. Grindrod

1 Now, in 2011 and 2012, while Bill was helping sell
2 these dental franchises, Kent Maerki was building another
3 company with Mr. Alcorn. That company was called Janus
4 Spectrum.

5 Now, I can tell you, as I think both the other
6 lawyers have alluded to, the spectrum stuff is going to get
7 complicated. But let me give you a quick preview.

8 Spectrum, as Ms. Yusi said, this is the radio waves.
9 So there's frequency that exists, and sending signals over
10 the frequency is how all of our smart things talk, even if
11 it's watching TV, a cell phone, your internet-connected
12 devices. Everything, basically, that's wireless uses some of
13 this spectrum to communicate. That's what the signal travels
14 over.

15 The Federal Communications Commission, or the FCC,
16 is the federal agency that regulates wireless communications.
17 One of the ways they do that is by giving licenses to folks
18 who want to use certain parts of the spectrum, because you
19 can't have a bunch of people in the same place using the same
20 frequencies or you get interference. Basically, it doesn't
21 work. So the FCC grants a license to a particular person or
22 a particular company to use that frequency in a particular
23 geographic area, and you're going to hear those referred to
24 over the course of this case -- those are spectrum licenses.

25 So the evidence is going to show that Kent Maerki

Opening Statement - By Mr. Grindrod

1 and David Alcorn, both, had backgrounds working in spectrum.
2 For example, you're going to hear that Maerki bragged about
3 having made people a fortune in the 1980s through spectrum
4 investments. You're going to hear about how Kent Maerki
5 bragged about how his name appeared in books about spectrum,
6 "Money From Thin Air" and "Wireless Nation." Listen for
7 those to come up.

8 You're going to see a video that Kent Maerki
9 created, that he put together, to pitch this opportunity to
10 talk about what spectrum is, how valuable he said it was, and
11 how all of these investments were going to work.

12 The evidence will show, as Mr. Yarow alluded to,
13 that more recently, not in the '80s, more recently, David
14 Alcorn and Kent Maerki worked together at this other company,
15 SmartCOMM. And when Maerki and Alcorn left SmartCOMM, they
16 started their own competing company -- it was basically doing
17 the same thing -- called Janus Spectrum.

18 And the idea behind Janus was to take advantage of
19 some regulatory changes, and this is where it starts to
20 involve lawyers and engineers and federal regulators, and it
21 gets really complex. But you're going to hear basically that
22 the FCC announced plans to reband the 800-megahertz part of
23 the spectrum.

24 So Nextel, which you may have heard of, later bought
25 by Sprint -- Nextel had licenses to operate in the

—Opening Statement - By Mr. Grindrod—

1 800-megahertz frequencies, but you're going to hear that the
2 new regulations were going to change all that around. So
3 Nextel was moving out of the 800-megahertz, and you're going
4 to hear that the FCC planned to offer licenses to operate in
5 that frequency where Nextel had been and some nearby.

6 It's complicated, but that's the quick version, and
7 you're going to hear more about it.

8 Why do we care about all that? We care because
9 Maerki and Alcorn created Janus to help people apply for
10 spectrum licenses in that area and to turn those licenses
11 into money. To turn them into money, the idea, they said, at
12 least early on, was that they were going to lease these
13 licenses back to Sprint or some other wireless carrier.

14 People would pay -- the idea was people would pay
15 Janus to research the existing networks, draw up some specs,
16 have the engineering done, put together the FCC license
17 application, submit it to the FCC, and if a license was
18 granted, then Janus's client would now have a spectrum
19 license. And you're going to hear that Janus charged quite a
20 bit to do that, and submitting the application didn't
21 guarantee that you were going to actually get a license.

22 So you're going to hear from an engineer -- you're
23 going to hear from an engineer who worked with Janus on these
24 applications, and he's going to talk about some of the things
25 that he did to try to increase the chance that you were going

Opening Statement - By Mr. Grindrod

1 to be successful, but at the end of the day, it wasn't a
2 guarantee because somebody else could get the same license
3 that you applied for.

4 So the evidence will show that some folks came up
5 with a way to try to reduce the risk a little by creating
6 LLCs, companies that would submit multiple license
7 applications on behalf of their members.

8 The evidence will show, for example, that if ten
9 people wanted to apply for spectrum licenses, they could each
10 apply individually, but if eight of the ten got the license,
11 then two people would be totally shut out. And then even the
12 eight people who got licenses, you're going to hear and the
13 evidence will show, that some of the licenses were more
14 valuable than others based on the geographic market.

15 So you're going to hear that folks came up with a
16 way to try to solve that problem, and you're going to hear
17 that these companies were supposed to basically allow people
18 to pool their money together and spread the risk out. So you
19 would become a member of the company, and that company would
20 apply for the applications.

21 So if we take that same example, apply for the ten
22 licenses and only get eight, instead of two people being shut
23 out, everybody would have a one-tenth share in the eight
24 licenses. It's a back-of-the-napkin example, but that's the
25 idea, these pooled spectrum investments. And you're going to

—Opening Statement - By Mr. Grindrod—

1 hear that the main person who was offering these pooled
2 spectrum investments was Daryl Bank.

3 Remember I talked about him earlier. He's the
4 investment advisor from Virginia Beach who became national
5 sales coordinator for Maerki's dental business.

6 But the evidence will show that Daryl Bank became
7 deeply involved in these pooled spectrum investments. He ran
8 a few different ones, and you may hear about some of those,
9 but I think the main one you're going to hear about is
10 probably Spectrum 100. So when you hear "Spectrum 100,"
11 think that's Daryl Bank and the pooled spectrum investments.

12 So back in 2013, when Kent Maerki is still sending
13 out letters about how strong Dental Support Plus Franchise
14 is, Mr. Smith was invited to offer spectrum investments to
15 his clients as well. And the dental and spectrum -- Ms. Yusi
16 is right -- they involved a lot of the same players.

17 You're going to hear that David Alcorn and Kent
18 Maerki and some other folks sat down with Bill Smith to
19 explain to him the idea behind these spectrum investments.
20 You're not going to hear that Mr. Smith had any background in
21 spectrum, in the '80s, more recently, or ever.

22 But the evidence will show that these principals,
23 these insiders, showed Mr. Smith documents explaining what it
24 was, touting the value of these investments. And the
25 evidence is also going to show that Mr. Smith saw that Janus

Opening Statement - By Mr. Grindrod

1 was working with other folks who had experience and a track
2 record in the field.

3 You're going to hear about a guy named Peter Lewis
4 who consulted with Janus and presented at a Janus conference
5 that Mr. Smith attended. You're going to hear that Peter
6 Lewis was introduced at that conference as a former Army
7 signal officer who was commander of the largest signal
8 communications company in the United States, that he
9 co-founded the first cell company in the United States, that
10 he consulted with the FAA and all these federal agencies, and
11 you're going to hear that Peter Lewis shared with Bill Smith
12 and other conference attendees his belief in the value of
13 these spectrum licenses.

14 You're going to hear about an engineer who worked
15 with Janus on this project, a guy named Tripp Forrest.
16 You're going to hear how his involvement and his presence at
17 these Janus conferences lent immediate credibility to these
18 licensed ventures based on his background and his experience
19 in the field.

20 The evidence will show that Alcorn and Maerki and
21 Bank touted these spectrum investments as highly valuable
22 assets, and you're going to hear that Bill Smith agreed to
23 present these spectrum investments to his clients, and he
24 did.

25 Just like with the dental franchises, you're going

Opening Statement - By Mr. Grindrod

1 to see that Mr. Smith basically used the marketing materials
2 that he got from spectrum insiders, spectrum executives.
3 You're going to see that he repackaged some of it. You're
4 even going to see that he made his own little copy of Kent
5 Maerki's video. You're going to see that Mr. Smith shortened
6 it a little, but he basically used Kent Maerki's script and
7 Kent Maerki's slides.

8 The evidence will show that Mr. Smith may have put
9 the pitch in his own words or his own package, but he told
10 prospective clients what he was told.

11 The last company we're going to talk about is Xcel
12 Bandwidth. So Xcel Bandwidth -- let me say this: At some
13 point it became clear, the evidence will show, to everyone
14 that these spectrum licenses and the 800-megahertz band, that
15 band we're talking about, could not, in fact, be leased back
16 to these major carriers; Sprint, AT&T, T-Mobile, whatever --
17 couldn't do that.

18 And you're going to hear that there was kind of some
19 conflicting views. Different folks had different opinions as
20 to how those licenses and those frequencies should be used.
21 But one idea, and the one that Xcel was formed on, was to use
22 them to create push-to-talk networks.

23 So this is, like, push the button on the side, and
24 you have two-way radio communication, like for construction,
25 oil fields, truck drivers, that kind of thing.

Opening Statement - By Mr. Grindrod

1 So you're going to hear that Daryl Bank created this
2 company called Xcel Bandwidth. That was based around
3 building these actual push-to-talk networks, so not getting
4 licenses, you're going to hear, but actually building --
5 physically building these networks out; equipment on towers,
6 putting these technologies to work.

7 You're going to hear that they actually bought an
8 existing radio system in Texas that was already using the
9 800-megahertz frequency and that they planned to expand that
10 system further. So that's Xcel Bandwidth.

11 And you're going to hear that Bill Smith offered
12 clients investments in Xcel Bandwidth, and you're going to
13 see the information that he provided to folks. You're going
14 to see the two-page form, written in layman's terms, that he
15 gave to Sharyon Bean, that she signed and said she
16 understood. It's not a big, thick legal document about this
17 membership and that, just explaining in plain language this
18 is what we're doing, push-to-talk, in Texas.

19 So those are the investments that are at issue in
20 this case. We've got Dental Support Plus Franchise, that's
21 Kent Maerki in Arizona; Janus Spectrum, that's Kent Maerki
22 and David Alcorn; Spectrum 100 and the other pooled spectrum
23 investments -- Spectrum 100 is Daryl Bank -- and then Xcel
24 Bandwidth, that's the push-to-talk, the actual towers in
25 Texas, and that's Daryl Bank.

Opening Statement - By Mr. Grindrod

1 So I know it's a lot. I know it's a lot of names
2 and a lot of companies, but it's important to understand all
3 this because you're going to be asked at the end of the day
4 to decide important questions that depend on who knows what,
5 who's involved in what, and how all this fits together.

6 So that's a preview of the information about these
7 companies, but let's talk a little bit about some different
8 categories of problems you're going to hear about. And it
9 may be helpful to think of these in three different groups.

10 So first I want to talk to you about just what I'm
11 going to call, for discussion purposes, "no big deal"
12 problems. So these are issues that insiders and executives
13 at the companies, like Maerki and Bank, didn't hide from
14 anybody but they claimed were no big deal.

15 For example, you're going to hear that Dental
16 Support Plus had issues with vendors who were struggling to
17 perform, struggling to get patients generated. But you're
18 going to see that, at some point at least, Kent Maerki
19 acknowledged those issues, but he told existing franchisees
20 and salespeople alike that the company was still in great
21 shape because they had a new vendor that was going to resolve
22 all those issues.

23 Another example from spectrum, right, another
24 example of what I'm calling the "no big deal" problem.
25 You're going to hear that the SCC started an investigation

Opening Statement - By Mr. Grindrod

1 into Maerki and Alcorn's company, the Janus company, but
2 you're going to see and hear that Janus consistently and
3 repeatedly told investors and salespeople alike that the SCC
4 investigation was no big deal; explicitly told the
5 salespeople that Janus had not been accused of any
6 wrongdoing.

7 You're going to see time and again that the
8 salespeople and potential investors received the same
9 information from company insiders. When the executives
10 acknowledged the problem, it was always explained away as no
11 big deal.

12 The second category of problems you're going to hear
13 about are the cover-ups. You're going to hear that there
14 were some problems or issues that the big wigs, the insiders
15 at these companies, knew about but affirmatively hid.

16 For example, the evidence will show that some Janus
17 executives knew that the main way that Janus had talked about
18 turning these licenses into money, leasing them back to the
19 major cell phone companies -- some of the insiders knew that
20 couldn't be done, but they didn't tell anybody. They didn't
21 tell investors, they didn't tell salespeople.

22 Another -- well, I guess what I would say to -- the
23 other way to look at this is look for not just examples of
24 what the insiders hid, but you're going to see direct
25 evidence of a conspiracy among the insiders and executives to

Opening Statement - By Mr. Grindrod

1 hide the truth from salesmen like Bill Smith. You're going
2 to see a memo from Kent Maerki to his employees at Dental
3 Support's corporate offices, the people in Arizona, just
4 before salesmen were supposed to come for a visit to the
5 corporate office, and the memo in the headline says, quote,
6 "The discipline of restraint when talking to sales reps."

7 The evidence will show that Maerki forbid his
8 employees at corporate from speaking freely with sales reps
9 like Bill Smith. "Don't answer their questions." "Do not
10 give them information." Maerki wrote in that memo, that DSPF
11 memo, in black and white his philosophy for dealing with
12 salespeople.

13 Quote: "We are giving them what they need to have
14 confidence in selling the franchises. That's it." All caps,
15 bold, exclamation point.

16 Watch for this. Over the course of the trial, pay
17 attention when you see executives and insiders at these
18 companies tightly controlling the information that gets to
19 the salesmen.

20 You're also going to see an e-mail from Daryl Bank
21 that's really critical to understanding how these insiders
22 ran these companies. The evidence is going to show that one
23 of the salesmen -- I mentioned this earlier -- a guy named
24 Tony Sellers, put a bunch of his own money into Dental
25 Support.

—Opening Statement - By Mr. Grindrod—

1 But then there came a time when Tony Sellers wanted
2 to dump that investment, and the evidence will show that
3 Daryl Bank tried to cover up the fact that Tony Sellers was
4 liquidating, was selling his ownership in those franchises.
5 And why? The evidence will show that Daryl Bank said exactly
6 why.

7 In an e-mail he said he wanted to keep that
8 information secret so that other salesmen wouldn't learn
9 about it, wouldn't learn that another salesman was selling.
10 He wanted to keep the salesmen in the dark to keep their
11 confidence up in the company.

12 In these memos and e-mails, ladies and gentlemen,
13 you're going to see smoking-gun evidence that Kent Maerki and
14 Daryl Bank hid negative information about these companies
15 from their salesmen like Bill Smith.

16 So we've got "no big deal" problems; we've got
17 cover-ups. Third category: Stolen money.

18 You're going to see that Maerki and Bank just
19 straight up stole investor funds. When the money came into
20 Spectrum 100, you're going to see that behind the scenes,
21 Daryl Bank and his minions were just embezzling large chunks
22 of that money.

23 THE COURT: You have four more minutes.

24 MR. GRINDROD: Yes, Your Honor.

25 It's right there in the accounting books. So you're

Opening Statement - By Mr. Grindrod

1 going to see that Daryl Bank was paying his American Express
2 bill with investor funds. You're going to see that he was
3 buying expensive watches with investor funds. You're going
4 to see that he bought a \$25,000 dog with investor funds.

5 Daryl Bank and Kent Maerki stole millions from
6 investors, and it ruined people's lives. People put their
7 life savings into these companies, their retirement into
8 these companies, and with only a few exceptions, they didn't
9 see that money again.

10 These con artists, you're going to see, they tricked
11 people into trusting them, and you're going to hear from a
12 lot of those people, people who repeatedly put their trust in
13 Maerki and Bank year after year, time and again.

14 There's no question, ladies and gentlemen, that the
15 evidence is going to show there was a massive fraud. The
16 question, the critical question in this case, and the one
17 you're going to have to answer, is: Was Bill Smith in on it?

18 The evidence will show that Maerki and Bank got
19 people like Mr. Smith to pitch investments for them by
20 pitching investments to them.

21 Now, the evidence is going to show that a couple
22 salespeople stumbled into the truth when they were
23 accidentally copied on an e-mail by mistake by company
24 insiders. They got to peek behind the curtain, as you'll
25 see. But the evidence will show that Bank and Maerki's fraud

Opening Statement - By Mr. Grindrod

1 depended on many salespeople throughout the country going to
2 people in their lives.

3 The evidence is going to show that Bill Smith and
4 his wife, Susan, had lived in the same town outside
5 Sacramento for 21 years, they had attended the same church
6 for 30 years, and that Bill Smith went to these folks and
7 pitched these investments.

8 The evidence is going to show that Maerki and Bank
9 got Bill Smith and other salesmen around the country to sell
10 these investments to people that they went to church with and
11 that they saw every day, not by recruiting the salesmen into
12 a criminal conspiracy, but by convincing them that these were
13 good investments.

14 Ladies and gentlemen, at some point, you're going to
15 hear passion in this case, passion and emotion. You may hear
16 about things that Mr. Smith said when he was passionate and
17 emotional right after he was accused of this.

18 When you're accused of something that you feel like
19 you didn't do, especially when you know you actually were the
20 one -- were one of the people who were duped, you would be
21 angry, you would be frustrated. People say things that
22 aren't flattering when they're frustrated, embarrassed,
23 angry. In other words, the evidence is going to show that
24 Bill Smith is a human being.

25 You're also going to hear emotion from investors.

—Opening Statement - By Mr. Grindrod—

1 And I'm not telling you to ignore that, ladies and gentlemen.
2 These folks lost a lot of money, and you should feel sorry
3 for them. Try to set that aside when you're deciding
4 questions of "What did Bill Smith know?" "Was Bill Smith in
5 on it?" But it's okay to feel sympathy for these people.
6 They lost a lot.

7 Ladies and gentlemen, as the judge told you, at the
8 end of this case, the government is going to have to prove
9 beyond a reasonable doubt that Mr. Smith was in on it, that
10 he intentionally lied to people to get money, that he entered
11 into an agreement, a conspiracy to defraud. Saying something
12 that you believed to be true and it turned out to be wrong,
13 that's not a crime. That's a mistake. It's an accident, but
14 it's not a crime.

15 Ladies and gentlemen, at the end of this case, after
16 you've heard all the evidence, Lindsay McCaslin is going to
17 stand up and ask each of you to carry out your individual
18 responsibility to judge the evidence in this case.

19 The evidence in this case will show that Daryl Bank
20 and Kent Maerki tricked a lot of people, that they hid the
21 truth from a lot of people, and that Mr. Smith was one of
22 those people. That's why we're going to ask you to find him
23 not guilty.

24 THE COURT: Ladies and gentlemen, we're going to
25 take a 15-minute break.

1 (The jury exited the courtroom.)

2 THE COURT: I don't know whether the government will
3 be able to finish its witness today, but we're going to try
4 to go to around maybe 5:15, 5:30 at the latest.

5 MS. YUSI: Yes, sir.

6 (Recess from 3:57 p.m. to 4:15 p.m.)

7 THE COURT: Okay. The Court has changed its
8 position on this witness here. I think that we're going to
9 start on this witness fresh tomorrow morning at 9:30. So
10 we'll have the jury just go on and leave, and that's the way
11 we're going to proceed 9:30 tomorrow morning.

12 Have them come on in.

13 (The jury entered the courtroom.)

14 THE COURT: Let the record reflect that all jurors
15 are present in the courtroom.

16 Does counsel concur?

17 MS. YUSI: The government does.

18 MR. GRINDROD: Yes, Your Honor.

19 MR. YAROW: Yes, Your Honor.

20 THE COURT: Ladies and gentlemen, the Court has made
21 a determination we will not be calling a witness here at this
22 juncture. We will be coming back tomorrow morning at 9:30.
23 Be here so you will be ready to go at 9:30. We don't start
24 at 9:35 or 9:40, now. We're starting at 9:30, which means
25 you want to get in here in time so that you can get past the

1 check-in and et cetera.

2 Do not discuss this case with your family or anybody
3 else that's interested. They'll just have to hold their
4 curiosity until you can finish the case. Be safe, protect
5 yourself, and we'll see you in the morning.

6 I wanted to remind you, do not bring your lunches.
7 Throughout this trial, you will be eating lunch here in the
8 building, and the United States, the taxpayer, will provide
9 you lunch. When you come in, you will be given a chance at
10 some point to put in an order for your lunch so it will be
11 ready to go at 1:00 when we break for lunch.

12 The reason the Court is doing that is to cut down on
13 the likelihood that we'd have any problems. We're trying to
14 remain safe, and that's the reason we're doing it. Some of
15 you will be eating down here in that jury assembly room, and
16 others may be in another room to make sure you have the
17 proper spacing since you have to take your mask off.

18 You may be dismissed.

19 (The jury exited the courtroom.)

20 THE COURT: I had a conversation with the
21 United States Marshal. In order to move these witnesses that
22 the Marshal has to move, they don't have a lot of staff, so
23 they need some notice. So you need to give them some notice
24 about when you want your witnesses in here.

25 You cannot give them notice on Friday that you want

1 a witness on Monday morning because you may not be able to
2 get that witness. So give them notice.

3 I know, for the defense, you have to wait and see
4 when the government might be ending, but I think they'll give
5 you enough notice so you can get your witnesses in here.
6 That's the only thing I had to say, and I had forgotten to
7 tell you that.

8 Now I think we're out of here.

9 (Proceedings adjourned at 4:21 p.m.)

10
11
12 CERTIFICATION

13
14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16
17
18 _____/s/_____

19 Carol L. Naughton

20 August 30, 2022